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PRECEDENTS,

FROM

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AND

Drafts of Actual Practice;

WITH

GENERAL COMMON FORMS, AND VARIATIONS

ADAPTED TO ALL THE CIRCUMSTANCES USUALLY OCCURRING;

FORMING A

SYSTEM OF CONVEYANCING;

WITH

DISSERTATIONS, AND PRACTICAL NOTES.

IN CONTINUATION OF THE WORK

BY THE LATE

W. M. BYTHEWOOD,

OF LINCOLN'S INN, ESQ. BARRISTER AT LAW.

BY

WILLIAM PALMER PARKEN, OF THE INNER TEMPLE, ESQ.

AND

JAMES STEWART, OF LINCOLN'S INN, ESQ.

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PARTITION ..... BY MR. STEWART.

PARTNERSHIP ..... BY MR. PARKEN.

PURCHASE DEEDS ..... BY MR. STEWART.

*** *An Index to the Notes of this Volume will be given in the next Part.*

ADVERTISEMENT.

THE present continuation of Mr. Bythewood's Conveyancing has been undertaken in order to supply the great demand for that Work, and to obviate any difficulty which might arise from the announcement by the publisher of Mr. Jarman's Edition, that in his subsequent numbers no reference would be made to Mr. Stewart's Edition of the Three Volumes edited by Mr. Bythewood.

As Mr. Stewart found it impossible to bring out the whole of the Work sufficiently early to meet the wishes of the profession, Mr. Parken, has at his request, undertaken to contribute some of the Titles. The Fourth and Fifth Volumes are in a state of forwardness, and will be completed as speedily as possible; but as some Precedents under the Titles to be comprised in those Volumes are already before the Profession, it has been thought expedient that the present Volume should be first published.

The continuation will be rendered as practically useful as possible; and it is hoped that it will be compressed

within Five Volumes, making, with the Three Volumes edited by Mr. Bythewood, Eight Volumes in the whole. The notes will be devoted chiefly to the consideration of subjects of a practical nature, but will frequently be extended to matters not already sufficiently discussed by others. The decisions on the subjects treated of, down to the time of publication, will be carefully adverted to, and, when important, stated at length. A full and complete Index, as well of the Precedents as of the Notes to the whole Work, will be given either in the last Volume, or in a Supplemental Volume.

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PARTITION.

ON JOINT TENANCY, COPARCENARY, AND TENANCY IN COMMON, AND THE CONVEYANCES FOR EFFECTING A PARTITION.

I.—Joint Tenancy.
II.—Coparcenary.
III.—Tenancy in Common.
IV.—The Conveyances for effecting a Partition.

As a knowledge of the distinctions between the estates of joint-tenants, coparceners, and tenants in common, is necessary to a correct understanding of the conveyances employed to effect a partition, it seems proper here to mention the principal points relating to these different estates; and then to proceed to the consideration of the proper conveyances for effecting a partition of them.

I.—Joint Tenancy.

I.—*Joint Tenancy—In what Property it may exist—Of what Estates—Incidents to the Estate—Unity of Time, when an incident—Entire seisin of an Undivided Moiety, and Practical Consequences—Survivorship and its Consequences—Joint Tenants must implead and be impleaded together—Remedies by one Joint Tenant against another.*

Joint tenancy always arises by the act of the parties, as by purchase or devise, and never by descent, or other mere act of the law. It

Joint-tenancy arises by the act of the parties.

cannot exist by prescription, although prescription pre-supposes a *grant*, because an estate in joint-tenancy, if not determined by severance, must necessarily cease on the death of one, or all but one, of the joint-tenants, Co. Litt. 195, b. It may exist in every species of property, as well in personal as in real estate, Litt. s. 381. Co. Litt. 183 a. 199 a.

In what property it may exist.

Of what estates it may exist.

Lands may be granted or devised to two* or more, as joint-tenants, in fee, or for the term of their lives, or for the term of another's life, Litt. s. 277, or to two or more in remainder, Co. Litt. 188 b, or for a term of years, Litt. 281. *Aston* v. *Smallman*, 2 Vern. 556, 2 P. Wms. 530, or for an estate at will, 2 Bl. Com. 180; but lands cannot be granted to two or more as joint-tenants in tail, unless the donees may lawfully intermarry. Thus, if lands be limited to two men, or two women in tail, as to John and Robert, and to the heirs of their bodies begotten; or to Ann and Mary, and the heirs of their two bodies begotten; John and Robert in the one case, and Ann and Mary in the other, will have a joint estate for the term of their lives; and on the death of the survivor, the issue of each shall take a moiety of the lands, Litt. s. 283, s. 286. Co. Litt. 182 b. *Cook* v. *Cook*, 2 Vern. 545. cit. 2 P. Wms. 530.

There cannot be joint tenants in tail, unless they may lawfully intermarry.

Incidents to the estate of joint-tenants.

Unity of interest.

Joint-tenants must have one and the same interest in the lands: that is to say, their shares must be equal, and the duration of their

---

Tenancy by entireties.

* A gift to two persons, being at the time husband and wife, creates an estate which is called a tenancy by *entireties*. From the legal notion of the unity of the persons of husband and wife, it is neither a *sole* estate nor a *joint* estate. It differs from joint tenancy and tenancy in common chiefly in this particular, that the husband cannot alone alien any part or share of the lands, so as to bind his wife in case she should survive him. In reference to the subject of the present note, it has not been thought necessary to enter fully into the nature of this peculiar estate, which, to use an expression of Lord Kenyon, in *Doe* v. *Perratt*, 5 Term Rep. 654.—" has been settled for ages." It seems however proper to observe, that if an estate is conveyed to a man and woman while single, as joint tenants, their estate will not be altered by a subsequent marriage between them, but they will continue to hold their respective moieties as joint tenants; and also, that it is considered that a husband and wife may, by express words, be made joint tenants, or tenants in common, under a gift to them during coverture. See *Owen* v. *Morgan*, 3 Rep. 5 a. 11 Thom. and Fras. edit. Litt. s. 291. Co. Litt. 187 a. *Back* v. *Andrews*, 2 Vern. 120. Prec. Cha. 1. S. C. Co. Litt. 187 b. *Cupplediike's case*, 3 Rep. 5 b. 14 Thom. and Fras. edit. *Hallett* v. *Saunders*, 2 Lev. 107. *Moody* v. *Moody*, Ambl. 649. *Symond's case*, Moore, 92. *Green* v. *King*, 2 Bl. Rep. 1211. *Doe* v. *Wilson*, 4 B. & A. 303.

estates must be the same. One joint tenant cannot have an estate for life in the premises, and another an estate for years. Co. Litt. 188 a. 2 Bl. Com. 180.

Unity of title.

Another property of the estate of joint-tenants is, that it should be created by one and the same act, whether legal or illegal; as by the same conveyance or devise, or the same disseisin. Lit. 278.

Unity of time not a necessary incident, except in conveyances deriving their effect from the common law.

It is in most text-books laid down generally, that the estates of joint-tenants must commence at the same time. Co. Litt. 188 a. 2 Bla. Com. 180. 2 Cru. Dig. 433, 3d edit., and other more recent works. But it is now fully established, that this rule is confined to estates taking effect by the common law (See Co. Litt. 9 a.), and does not extend to estates taking effect under the Statute of Uses, or by executory devise. In these last, the estate will be in the releasee to uses, or the heir at law until the uses arise, and then the *cestui que use* shall be in by relation, from the time of the deed or will. Thus, in a case mentioned by Lord Coke, where a man made a feoffment to the use of himself and of such wife as he should afterwards marry, for term of their lives, and he afterwards married; the husband and wife were held to be joint-tenants, although they came to their estates at different times. Co. Litt. 188 a. And see *Aylor* v. *Chep*, Cro. Jac. 259. *Blamford* v. *Blamford*, 3 Bulst. 98. In *The Earl of Sussex* v. *Temple*, where lands were limited to the following uses: to Sir P. Temple and Anne his wife for their lives, remainder to their first and other sons in tail, remainder to the issues female of their bodies begotten. Sir P. Temple had two daughters, Anne and Martha. Martha died without issue; and afterwards Anne died.—Holt, C. J., held, that Anne and Martha took as joint tenants for life, with several inheritances: and the time of vesting was thought unimportant. 1 Lord Raym. 310. So in *Oates* v. *Jackson*, lands were devised to a woman, and the children on her body begotten, or to be begotten, by W. A., and their heirs for ever. It was held, that the woman and her children took as joint tenants, and it was thought no objection that the estates would commence at different times. 2 Stra. 1172. Also in *Stratton* v. *Best*, Lord Thurlow laid it down, that the vesting of the estate at different times would not prevent a joint-tenancy. 2 Bro. C. C. 233. And see *Mogg* v. *Mogg*, 1 Meriv. 654.

Each joint-tenant is seised of an undivided moiety of the whole. Practical consequences of this principle.

The next property of the estate of joint tenants is called unity of possession; which means, that each joint tenant has the entire seisin and possession of every parcel of the lands, and not merely of an undivided moiety of them: or, in other words, that each of them is seised of an undivided moiety of the whole, and not of the whole of an undivided moiety. 2 Bl. Com. 182. *Green* v. *King*, 2 Bl. Rep. 1211. From this last principle, arise many important practical results. Thus, the entry of one joint-tenant is the entry of all. Co. Litt. 192 a.

6 Mod. 44; and the seisin of one is the seisin of all. *Fisher* v. *Wigg*, 1 Salk. 391. 2 Salk. 423. If the estate be copyhold, only one fine is payable, and the joint-tenants make but one tenant to the lord. Kitch. 122 a. Co. Cop. s. 56. 2 Wils. 164. 1 Watk. Cop. [298.] Livery of seisin made to one joint-tenant will enure to the other or others. Co. Litt. 49 b. One joint-tenant may, without the consent of the others, appoint a bailiff to distrain for rent due to all the joint-tenants. 4 Bing. 562. Waste committed by one of two joint-tenants will be deemed to be committed by both, as to the place wasted, 2 Inst. 302; except as to copyholds, where it seems to be otherwise. Co. Cop. s. 59. A surrender of a lease to one will enure to both. Co. Litt. 192 a. So a release of right to one of several joint-tenants is a release to all. Prest. Watk. Princ. 77. And if there be two joint-tenants of a manor, one only may grant, and it will be good against his companion. Co. Cop. 34. Tr. 76. *Contra*, 1 Leon. 234. A lease for years by one of two joint tenants in fee or for life, will be good against both. Co. Litt. 185 a. 2 Roll Abr. 89. 2 Vern. 323; as a lease for years has always been considered rather as a benefit than a charge on the estate: but a lease for years by one of two joint-tenants for years will not be good as against his companion; as it is held to operate as a severance of the joint-tenancy. Co. Litt. 192 a. A lease for life by one of two joint-tenants in fee is also held to amount to a severance of the joint-tenancy during the continuance of the estate for life. Litt. s. 302. See also *Robinson* v. *Hoffman*, 3 Carring. & Pay. N. P. C. 234.

Survivorship a consequence of the entire seisin.

Another consequence of the entire seisin of joint-tenants is the well-known incident of the survivor taking the whole of the estate by survivorship, in case there is no severance. Litt. s. 280. This obtains in all joint-tenancies, as well of copyholds as freeholds, or personalty. Kitch. 122 a. Litt. 281; and in equitable as well as legal estates. *Rex* v. *Williams*, Bunb. 342. It is on this account that joint-tenancy has never been favoured in equity. *Lake* v. *Cradock*, 3 P. Wms. 158. *Aveling* v. *Knipe*, 19 Ves. 44. *Rigden* v. *Vallier*, 2 Ves. sen. 258. *Morley* v. *Bird*, 3 Ves. 631; and it is not now favoured in law. *Staples* v. *Maurice*, 4 B. C. C. 580, *arg*. *Hawes* v. *Hawes*, 1 Wils. 165; as both courts will, if possible, adopt any construction in preference to that which will carry an estate in joint-tenancy.

Joint-tenants cannot charge their estates beyond their life interest.

A consequence of this right of survivorship is, that joint-tenants cannot charge their several estates beyond their life interests. Litt. s. 286. Co. Litt. 184 a. *Abergavenny's case*, 6 Rep. 78; and this rule prevails even against the Crown. Co. Litt. 185 a;—a strong proof of the strictness with which it is adhered to.

So also if one joint-tenant merely agrees to alien his share, and dies without fulfilling his contract, the survivor cannot be compelled to perform the agreement. *Musgrave* v. *Dashwood*, 2 Vern. 45. 83.

3 Wood. Lect. 471. But joint tenants are bound by the alienation of each other, as thereby the tenancy is severed; and it seems that an execution under an elegit would give an interest binding on the survivors. Co. Litt. 185. 2 Prest. Abs. 58.

Although one joint tenant may alien, survivorship will still exist among the others.

If a joint-tenancy is severed as to one of several shares, it will still continue as to the other shares, and the owner of the severed share will become tenant in common with the owners of the other shares. Thus, if A. B. and C. are joint-tenants, and A. alien his share to D., B. and C. will continue joint-tenants of their shares, and on the death of either, his share will survive to the other; and D. will hold in common with B. and C. during their joint lives, and with the survivor during his life.

An estate in joint tenancy not subject to dower or curtesy, nor can it be devised.

Secus as to copyholds.

It also follows, as a consequence from the right of survivorship, that the estate of a joint tenant is not subject either to dower or to curtesy. Litt. s. 45. Co. Litt. 30 a., 37 b., 183 a.; nor can it be devised. *Butler's case*, 3 Rep. 25. *Swift* v. *Roberts*, 3 Burr. 1488. Amb. 617. A joint-tenant of copyholds may devise his share, if he previously surrender it to the use of his will; but in this the disposition takes effect rather under the *surrender*, which operates as a severance of the joint-tenancy, than under the will. Co. Litt. 59 b. *Porter* v. *Porter*, Cro. Jac. 100. *Allen* v. *Nash*, 1 Brownl. 127. *Gale* v. *Gale*, 2 Cox, 159. Watk. Cop. [126.]

Joint-tenants must jointly implead and be impleaded.

Joint-tenants must jointly implead and be impleaded. *Pullen* v. *Pullen*, Carth. 328. 5 Mod. 72. And service of a declaration in ejectment on one of two joint-tenants is good against both. *Doe* v. *Roe*, 10 J. B. Moo. 493.

Remedies by one joint-tenant against another.

At common law, one joint-tenant had no remedy against another, either for waste or for an undue receipt of the profits; but the statute of Westminster the Second, c. 22, gave him a writ of waste for the one injury, and the statute of 4 & 5 Ann. c. 15, s. 27, has given him an action of account for the other. For this last grievance he has also a remedy in equity. *Lorimer* v. *Lorimer*, 5 Mad. 363.

No compulsory partition between joint-tenants at common law.

By common law, one of several joint-tenants could not compel his companions to join in a partition of the joint estate; but a partition may now be enforced by a writ of partition under the provisions of the statutes 31 Hen. 8, c. 1. and 32 Hen. 8, c. 32.

One joint tenant may take by common law, and another under the statute of uses.

It is no objection to a joint-tenancy, that one takes by the common law, and another under the statute of uses. *Watts* v. *Lee*, Noy, 124. *Samme's case*, 13 Rep. 55.

II.—Coparcenary.

II.—Coparcenary—how it arises—Incidents of the Estate—Unity but not an Entirety of Interest—the Legal Consequences of this Unity of Interest—and of the Absence of Entirety of Interest.

How it arises.

Coparcenary can never arise by the act of the parties, as by purchase, or devise. It always arises by the act of the law, by descent. Litt. s. 264; and can therefore only exist in estates of inheritance. The descent may be either by common law, or by custom, as in the case of gavelkind. Thus, where A., seised of lands, either in fee or in tail, dies intestate, leaving no male issue, but two or more daughters, sisters, aunts, nieces, or other female heirs, the lands will descend to such daughters, sisters, &c. jointly, as coparceners. Litt. s. 241. Or if A., seised of lands according to the custom of gavelkind, dies intestate, leaving sons, brothers, uncles, or nephews his heirs, according to the custom of gavelkind; such sons, brothers, &c. will be coparceners. Litt. s. 265. And in this last case, and in similar customary descents, an estate in coparcenary may be held by males; but with these exceptions, this estate is proper only to females; or to those claiming through females. See Co. Litt. 164 b.

Exists only in real property.

An estate in coparcenary can only exist in real property, and it would seem in the chattels called heir-looms.

Incidents of the estate of coparcenary.

Unity of time is not essential to the estate of coparceners. Co. Litt. 164 a; although, as they always take by descent, they are in by virtue of the common law. Coparceners, from the nature of their estate, always hold the lands for the same duration of interest; as no one takes a qualified estate by descent; except an estate tail, under the statute *De donis*, which is called a descent by statute. But their several estates may arise by different descents: as where A. dies leaving two daughters, who claim as coparceners. On the death of one intestate, leaving issue, her share will descend to such issue, who will hold the lands jointly with their aunt, as coparceners: that is to say, if the issue be sons, or sons and daughters, the aunt and the eldest son will each hold an equal moiety, as coparceners; and if the issue be daughters, the aunt will hold one moiety of the lands, and her nieces the other, as coparceners. See Co. Litt. 164 b.

They have unity, but not entirety of interest. The consequence of the unity of interest.

Coparceners have a unity of interest, but they have not an entirety of interest; consequently few of the consequences of an entire estate apply to their seisin. They make but one heir of their ancestor; and, as respects copyholds, but one tenant to the lord, and therefore only one fine is payable. Litt. s. 241. Co. Litt. 67 a, 163 b. 3 Leon. 63. 2 P. Wms. 614. 1 Watk. Cop. [278.] They have but one freehold as regards strangers. Litt. s. 242. Co. Litt. 163 b, 169 a. The entry of one coparcener will enure as the entry of both. Co. Litt, 188 a.

243 b. 373 b. Gilb. Ten. Hob. 120. *Doe* dem. *Gill* v. *Pearson*, 6 East, 173; unless indeed this construction would operate to the disadvantage of the other. Bro. Ab. Copy. 1. Voucher, 23. Finche's Law, B. 2. ch. 3. 118, 119. Watk. Desc. 55; or unless the entry be a special one, by one coparcener expressly claiming the whole land, and taking the whole profits. Co. Litt. 243 b. 373 b. In these last cases the entry of the one coparcener will be considered merely as the entry of the one. But the right of entry of the other coparcener will not be taken away without an actual ouster: nor will her right to her moiety be devested, unless the one making the special entry shall afterwards make a feoffment of the whole to a stranger. Co. Litt. 374 a. *Reading* v. *Royston*, 2 Salk. 433. *Fairclaim* v. *Shackleton*, 5 Burr. 2604. *Coppinger* v. *Keating*, cit. in *Peaceable* d. *Hornblower* v. *Read*, 1 East, 568. 5 Com. Dig. 162. *Doe* dem. *Fisher* v. *Prosser*, Cowp. 217. *Davenport* v. *Tyrrell*, 1 Bl. Rep. 675. The possession of one coparcener is the possession of the other, and will carry the share of the other by descent to her heirs. *Doe* d. *Barnett* v. *Keen*, 7 T. R. 386. Coparceners must sue and be sued jointly; and they must join in an avowry for rent. *Stedman* v. *Bates*, 1 Ld. Raym. 64. Carth. 364. And a release of rights will enure to all. Prest. Watk. Prin. 77.

But although they have an unity of interest they have not an entirety of interest, and consequently, in the eye of the law, as between themselves, they have several freeholds. Co Litt. 164, a. They are entitled to the whole of an undivided moiety, and not to the undivided moiety of the whole; and, consequently, the incident of survivorship is not proper to their estate; every part descending severally to their respective heirs, although the unity of possession will continue as between the heirs until partition. Co. Litt. 164, a. 2 Bl. Com. 188; and it is to be remembered, that a writ of partition might have been had by one coparcener against another at the common law. Litt. s. 247, 248.

Of the absence of the entirety of seisin.

And further, both dower and curtesy, upon the same principle, attach on the estate of a coparcener; and the charges made by a coparcener, on his or her several share, will be valid and binding so far as that share extends.

III.—Tenancy in Common.

III.—*Tenancy in Common—how it arises—in what Property it may exist, and for what Time—Unity of Possession essential to Tenancy in Common—several Freeholds, and Legal Consequences thereof—Seisin by one, the Seisin of all—the principal Cases on this point stated, and their Principles deduced—Legal Consequences of their several Seisin.*

How it arises.

Tenancy in common may be created by the act of the party, as by

purchase or devise, or may be by the act of the law, as by descent*, Co. Litt. 188 b; or by the construction of law in the instance of a gift to two persons of a corody. Co. Litt. 190. It may also exist by prescription. Co. Litt. 195 b. Litt. s. 310.

In what property and for what time it may exist.

Tenancy in common may exist either in real or personal property, for any duration to time, either in fee simple, fee tail, or for term of life, or for years. Litt. s. 292. Co. Litt. 190 b.

Unity of possession is alone necessary to the estate of tenants in common.

A joint or common title is not necessary to the estate of tenants in common. 2 Bl. Com. 191. And the only unity required between them is unity of possession. "For," as it is well expressed by the learned commentator on the laws of England, "one tenant in common may hold his part in fee simple, the other in tail or for life: so that there is no unity of interest. One may hold by descent, the other by purchase; or the one by purchase from one person and the other by purchase from another; so that there is no unity of title. One estate may have been vested fifty years, the other but yesterday; so that there is no unity of time." 2 Com. 191.

They have several freeholds. Legal consequences of their seisin.

Tenants in common have several freeholds in the lands which they hold together, consequently, in real or mixed actions they have several actions. Co. Litt. 189 a, 195 b. But for some purposes they have one estate, and in personal actions they have but a joint action. Litt. s. 315. And if a joint injury be done to tenants in common, they must join in obtaining their remedy. Litt. s. 314—317. Co. Litt. 197 b. *Cutting* v. *Darby*, 2 Bl. Rep. 1077. *Midgley* v. *Lovelace*, Carth. 289. *Anon.* Godb. 283. *Hudson* v. *Thellgar*, 2 Ro. Rep. 212. Cro. Jac. 611. S. C. *Wallace* v. *M'Claren*, 1 Man. & Ry. 516. But when the injury can be severed, they have several actions. 1 Ld. Raym. 341. 2 Bl. Rep. 1077. *Powis* v. *Smith*, 5 B. & A. 851. As if a terre-tenant pay the whole rent to one tenant in common contrary to the express notice of the other, the latter may distrain for his share of the rent. *Harrison* v. *Barnby*, 5 T. R. 246; and see *Henniker* v. *Turner*, 4 B. & C. 157.

No survivorship.

As there is no entirety of seisin in tenants in common, there is no survivorship between them, each share of the several tenants descending to his respective issue.

Each tenant answerable for waste committed by him.

And it would seem that each tenant in common is alone answerable for waste committed by him. Moor. 71. pl. 194. And see *Martin* v. *Knollys*, 8 T. R. 145.

Seisin of one the seisin of all.

But the seisin and possession of one tenant in common is the seisin and possession of all. Co. Litt. 199 b. Cro. Eliz. 641. As there is some variance in the cases on this point, and as the question is of practical importance, they will be stated at some length. In *Smales* v.

Descent.

* It is thus laid down by Lord Coke, and alluded to by Blackstone. It is difficult however to perceive how a tenancy in common could ever *arise* by descent.

Dale, Hob. 120, it is laid down that the entry of a tenant in common may be in three ways: 1. Either in the name of himself or his fellow; or, 2. Generally, which shall always be taken according to right, as being under construction of law, and therefore lawful; or, lastly, 3. Entry claiming all expressly, which cannot dispossess his fellow, for his possession is over all lawful, as well before as after such claim; so that there is no possession altered by such claim. A sole claim, without more, can never change the possession; and without a change of possession it remains as before. From which it follows, that a tenant in common can never be disseised by his fellow, but by an actual ouster.

In *Fairclaim* v. *Shackleton*, 5 Burr. 2604, the facts were these—One tenant in common having received all the rents for twenty-six years, an ejectment was brought by the other tenant in common, for the recovery of his moiety; and the question was whether this possession of twenty-six years amounted to an expulsion of the companion, so as to divest his estate.

It was said that tenants in common, as well as joint tenants and co-parceners, have a joint possession, and the possession of one is the possession of both; that the perception of the profits did not amount to an expulsion. One tenant in common might indeed disseise another, but then it must be done by an actual disseisin, and not by a bare perception of the profits only.

The court were of opinion that there was no adverse possession, no keeping the plaintiff out of possession. One tenant in common had received the rent, and not accounted for it to the other: but there was no expulsion—no ouster.

These principles however have been much shaken by the subsequent case of *Doe* v. *Prosser*, Cowp. 217, where it was determined that thirty-six years sole and uninterrupted possession, by one tenant in common, without any account or demand made, or claim set up by his companion, was a sufficient ground for a jury to presume an actual ouster of the co-tenant.

Upon a rule to shew cause why a new trial should not be granted, Lord Mansfield reported, that one tenant in common had been in sole possession of the lands for thirty-six years, without any claim or demand by any person or persons claiming under the other tenant in common. That no actual ouster was proved: but upon the circumstances, he had left it to the jury to say, whether there was not sufficient evidence before them to presume an actual ouster; in that case the lessors of the plaintiff were barred. The jury found there was sufficient evidence to presume an actual ouster. After the case had been argued, Lord Mansfield said, "It is very true that I told the jury they were warranted by the length of the time in this case, to presume an adverse possession, and ouster by one of the tenants in common of his companion;

and I am still of the same opinion. Some ambiguity seems to have arisen from the term *actual ouster*, as if it meant some act accompanied with real force, as if a turning out by the shoulders were necessary. But that is not so. A man may come in by rightful possession, and yet hold over adversely without a title. If he does, such holding over, under circumstances, will be equivalent to an actual ouster. For instance, length of possession during a particular estate, as a term for 1000 years, or under a lease for lives, as long as the lives are in being, gives no title: but if tenant *pour autre vie* hold over for twenty years, after the death of *cestui que vie*, such holding over will, in ejectment, be a complete bar to the remainder-man or reversioner, because it was adverse to his title. So, in the case of tenants in common; the possession of one tenant in common can never bar his companion, but is in support of their common title; and by paying him his share, he acknowledges him to be co-tenant. Nor indeed, is a refusal to pay of itself sufficient, without denying his title: but if, upon demand by the co-tenant, of his moiety, the other refuses to pay, and denies his title, saying, he claims the whole, and will not pay, and continues in possession, such possession is adverse, and ouster enough. The question then is, whether the possession in this case, after the particular estate existed, was a possession as tenant in common *eo nomine*, or adverse. It is a possession of near forty years, which is more than quadruple the time given by the statute, for tenants in common to bring their actions of account if they think proper, namely, six years: but in this case no evidence whatsoever appears of any account demanded, or of any payment of rents and profits, or of any claim by the lessors of the plaintiff, or of any acknowledgment of the title in them, or in those under whom they would now set up a right; therefore I am clearly of opinion, as I was at the trial, that an undisturbed and quiet possession, for such a length of time, is a sufficient ground for the jury to presume an actual ouster, and they did right in so doing."

The other judges concurred, and the rule for a new trial was discharged.

In *Peaceable* v. *Read*, 1 East, 568, where one tenant in common had levied a fine of the whole estate, and afterwards had taken the rents and profits, without any account, for nearly five years; this was held to be no evidence whence a jury should be directed, against the justice of the case, to find an ouster of his companion, at the time of the fine levied: and a verdict was, under the judge's direction, found for the plaintiff, (the person claiming against the fine,) and leave was given to the defendant to enter a nonsuit, if the court should be of opinion that an entry by the plaintiff was necessary to avoid the fine. After the argument, Lord Kenyon, C. J. said, that the whole of the defence was founded in a most unrighteous and fraudulent proceeding; and in order to give effect to it, the legal operation of the fine was insisted on; that

it was asked if this were not an adverse possession, by Pearsall, [the husband of the tenant in common who levied the fine,] at the time of the fine levied, where the line was to be drawn. He said he had no hesitation in saying where the line of adverse possession began, and where it ended. *Primâ facie,* the possession of one tenant in common was that of the other, and every case and *dictum* in the books was to that effect. But it might be shown that one of them *had* been in possession, and had received the rents and profits to his own use without account to the other; and that the other had acquiesced in this for such a length of time as might induce the jury, under all the circumstances, to presume an actual ouster of his companion, and that there the line of presumption ended. In the case of *Doe* v. *Prosser,* Lord Mansfield rightly said, it was not necessary to shew actual force in order to prove an ouster, as by turning a man out by the shoulders; but, as was also observed by Mr. Justice Aston, it might be inferred from circumstances; which circumstances were matter of evidence to be left to a jury. There was an undisturbed and exclusive possession by one tenant in common for [near] forty years, which the court properly held to be sufficient evidence of an ouster to leave to a jury: but no judge could think himself warranted in directing a jury to make such a presumption in this case, in order to work the grossest injustice, and in aid of fraud.

His Lordship then went over some of the particular facts of the case, and then proceeded thus:

" All the cases mentioned went upon the ground of acquiescence in an adverse holding, in order to presume an ouster. In *Fairclaim* v. *Shackleton,* [*ante,* 9.] there had been a perception of the rent by one tenant in common for twenty-six years: but the title of the other being admitted, no ouster was presumed. Without an ouster was found by the jury, the possession of one tenant in common must be taken to be the possession of all. I admit that, upon the principle of the case of *Lade* v. *Holford,* [3 Burr. 1901, Doug. 721,] the jury might, from circumstances, presume an ouster; and where the fact was so found, the legal consequences would ensue: but no judge would advise a jury to make the presumption in this case. Then, unless the holding were adverse, there was no occasion for an entry to avoid the fine. Suppose a tenant for years levied a fine, no entry by the landlord would be necessary, in order to enable him to maintain an ejectment at the end of the term. In *Taylor* v. *Horde,* [1 Burr. 113,] Lord Mansfield said, that in order to advance justice, he would enable the real owner in such a case to consider himself kept out by wrong, or not, at his election. So a tenant in common might rely on the possession of his co-tenant, as his own, unless there were an actual ouster in fact, or the jury found it from circumstances: but nothing of the sort was here found;

and therefore the court might consider the levying of the fine as rightfully and legally done, and intended to operate only on that share of the premises to which the defendants were lawfully entitled."

Mr. Justice Lawrence cited the case of *Coppinger* v. *Keating*, on a writ of error from Ireland, [Mich. 22 Geo. 3,] where one of the two brothers, professing the Catholic religion, entered, on the death of his elder brother, on the lands of which they were tenants in common, in consequence of the gavel act; which enacted, that the lands of persons of that persuasion should descend to all the males, according to the custom of gavelkind; and held them for several years, until his death: and the court determined, that the son of the elder brother was not barred by the statute of limitations, as the uncle was tenant in common with him under that act, no actual ouster being found.

The rule was made absolute for entering a nonsuit.

See further on this subject, Co. Litt, 199 b. *Sterling* v. *Penlington*, 14 Vin. Ab. 511. Cro. Eliz. 641. 1 Salk. 392. 2 Salk. 423. *Doe* dem. *Truscott* v. *Elliott*, 1 B. & A. 85.

It is somewhat difficult to reconcile the cases of *Fairclaim* v. *Shackleton*, and *Doe* v. *Prosser*; unless indeed it shall be said, that twenty-six years possession, by one tenant in common, shall *not*, and that thirty-six years *shall*, be deemed an actual ouster, which is very inconclusive. The following principles may, perhaps, be deduced from the cases cited:

Deduction from the cases.

That the entry and seisin of one tenant in common shall be the entry and seisin of the other, unless the entry be special, by the one entering claiming the whole land, and taking the whole profits; but the right of entry of the other tenant in common will not be taken away by such special entry, nor will his right be devested, except by an actual ouster. That an uninterrupted possession, by one tenant in common, for thirty-six years, shall be esteemed to be an actual ouster of the other; and that a disturbance of the rights of a tenant in common, as by driving his cattle off the land, will devest his possession, and be also considered an actual ouster. But that where the possession of one tenant in common is against justice and equity, and has only existed for a short time, although it be undisturbed, yet it shall not amount to an actual ouster.

Estate of tenants in common subject to dower, curtesy, and other legal consequences of their several seisin.

The estate of a tenant in common is subject to dower, Co. Litt. 32 b. 34 b. and 37 b. *Sutton* v. *Rolfe*, 3 Lev. 84; and to curtesy, *Sterling* v. *Penlington*, 14 Vin. Ab. 511. A release of right made to one tenant in common, will not enure to all. Prest. Watk. Prin. 77. Tenants in common do not make one tenant of copyholds on the rolls; they have several estates, and fines are payable by each, and they require several admittances. *Fisher* v. *Wigg*, 1 P. Wms. 21. 1 Lord Raym. 631. 1 Watk. Cop. 299.

Thus also, if two tenants in common grant a rent charge of 20*l.* yearly, the grantee shall have two rents of 20*l.*, *id est*, a distinct rent out of each share. Co. Litt. 269 b. n. 220 a; and it seems very doubtful whether equity would relieve under the ground of mistake.

Remedies of tenants in common against each other.

One tenant in common of a chattel cannot sue another, unless the latter shall have so disposed of the chattel as to render it impossible that the plaintiff should ever take it, and use it again. *Fennings* v. *Lord Grenville*, 1 Taunt. 241; and *Heath* v. *Hubbard*, 4 East, 110; *Voyce* v. *Voyce and others*, 1 Gow, N. P. C. 201. And see Co. Litt. 200 a. *Noye* v. *Reed*, 1 Man. and Ry. 63. But see also *Martin* v. *Knollys*, 8 T. R. 145. But one tenant in common of lands may have an account against the other, 4 and 5 Ann. c. 16; and it would seem, that he may file a bill in equity for the same purpose. *Lorimer* v. *Lorimer*, 5 Mad. 363. *Tyson* v. *Fairclough*, 2 Sim. and Stu. 142. *Milbank* v. *Revett*, 2 Meriv. 405.

IV.—The Conveyances proper for effecting a Partition.

IV.—*Agreements for Partition, and Conveyances founded on them—A Bill in Equity and Conveyances under the direction of the Court—Partition, how effected in Equity—How Joint Tenants may convey to each other, or to strangers—How Coparceners may convey to each other, and to strangers—How Tenants in common may convey to each other, or to strangers—Form of Assurances—Three modes*—1. *All the Parties may convey all the Lands to a Releasee to Uses—2. All the Partners may convey the separate Shares to each—3. Each Partner conveys his Moiety, &c. in the Lands to the other—Mode of partitioning Copyholds—Assignment of Terms—Dower—Title Deeds.*

The modes now in use are:
1. Agreement.
2. Writ of Partition.
3. Bill in Equity.
4. Private Act of Parliament.

The different modes of effecting a partition have been mentioned at considerable length in 1 Byth. 193; and there were, in former times, numerous other ways of effecting it, the most common of which are mentioned by Littleton, s. 243—261, and by Lord Coke, Co. Litt. 165 b. 174 b. But these have now almost entirely given way to four modes, *viz.* 1. By agreement between the parties. 2. By writ of partition, under the statute of Hen. VIII. 3. By bill in equity; and 4. By private act of parliament.

Agreements, and conveyances founded on them.

For the present purpose it is only necessary to consider the first, and the third. I. Where all the parties are desirous of effecting a partition, and willing to join therein, an agreement should be entered into to appoint valuers, or other proper referees, to value the property, and make a fair division and partition of it, and to settle the costs of the proceedings necessary to effect the partition, and make any other

preliminary arrangements that the parties may agree upon*. If all these matters have been previously attended to, or, from the peculiar circumstances of the case, are unnecessary, conveyances of the several shares may be prepared and executed, without any previous formal agreement.

A bill in equity, and conveyances under the direction of the court.

II. Where any of the parties resist or impede a fair partition, or where it may be beneficial for all parties that accounts should be taken under the direction of a court of equity, a bill in equity should be filed to compel a partition, and carry into effect all the arrangements otherwise effected by agreement. But in this case also, conveyances are necessary.

A court of equity can only act *in personam*, and not *in rem*, and the whole of the proceedings are carried on with the view of completing the partition by means of conveyances. A decree for partition only places the parties in the same situation as regards the conveyances or assurances necessary for the perfection of the partition, as if they had themselves agreed to make it. See Allnatt on Partition, 124.

In mentioning the proper conveyances for effecting a partition, therefore, it will not be necessary to pursue any further the distinction of voluntary and compulsory partition, as the conveyances, except in the variations made in the forms themselves, will not differ.

Proper conveyances from one joint-tenant to another.

The proper conveyance, either of corporeal or incorporeal hereditaments, from one joint tenant to another, is a release; as they are *in* from the first grantor or devisor, and are actually seised of the whole estate. Bro. Ab. Joint Ten. pl. 2. Co. Litt. 273 b. But the assurance effecting the release need not have the formal character of a release. Thus, where one joint tenant granted, bargained, sold, assigned, set over, and confirmed to another, it was held, that although the jury found that he *granted* his estate, yet the court would adjudge that he *released*. *Chester* v. *Willan*, 2 Saund. 96 a. And see Bro. Ab. Confirmation, pl. 11. *Eustace* v. *Scawen*, Cro. Jac. 696.

What is necessary to effect a partition in equity.

A partition between joint tenants, to be binding, even at the common law, must have been by deed. Litt. s. 290. Co. Litt. 169 a. But a partition by coparceners, or tenants in common, might have been by parol only. A mere agreement or note in writing is sufficient to effect a partition in equity, as well between joint tenants, as tenants in common and coparceners. 2 Bl. Com. 185. 2 Ves. 634. *Trewer* v. *Relfe*, 2 B. C. C. 220. Co. Litt. 246 a. n.(1). *May* v. *Hook*, 2 Vern. 63. 2 B. C. C. 122. Although without a deed, the legal estate will still be held in joint tenancy. 2 Cru. Dig. 461, 3d edit. And an agreement for partition, by the husbands of two joint tenants, will not bind the inheritance of their wives, even in equity. *Ireland* v. *Rittle*, 1 Atk. 541.

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* See the requisite forms of agreements in 1 Byth. 215—259.

How joint-tenants convey to each other, or to strangers.

Joint tenants may release to each other in fee, without the word "*heirs.*" Co. Litt. 9 b. n. (6), and without a lease for a year, (although, to prevent any question about the suspension of the joint tenancy, a lease for a year is generally used; and they may convey copyholds, as well as freeholds, by release alone. Co. Litt. 59 a, n. (2). *Mortimer's case,* Het. 150; if they have been both admitted, 4 Rep. 25, b. 59, a. and 1 Watk. Cop. Cov. edit. 82. But they cannot grant, 1 Vent. 78. Cro. Jac. 696; bargain and sell, *ib. Swift* dem. *Neale* v. *Roberts,* 3 Burr. 1489; surrender, Perk. s. 586; either freeholds or copyholds, Kitch. 86 a. Co. Cop. s. 35, c. 82; devise, 1 Pow. Dev. 143, Jarm. edit.; nor enfeoff, Gilb. Ten. 73-4, to each other. Neither can they exchange with each other, Touch. 292, although this is doubted by Mr. Preston. See *infra,* p. 16.

But each joint tenant may convey his share to a stranger, and thus sever the joint tenancy; and here any of the usual assurances capable of passing a fee may be employed. And if one joint tenant, the other being upon the land, enfeoff a stranger of the entirety, it will be good for a moiety only. Perk. s. 220. *Townsend and Parton's case,* 3 Leon. 52. The joint tenancy will be equally severed, whether the lands are conveyed to the use of the stranger, or to the use of the tenant himself. See Watk. Prin. 44. And if this is done before partition, the stranger will hold the lands with the remaining joint tenant, as tenants in common. Litt. s. 292—299, and s. 309.

How coparceners may con-

Coparceners may either release * to each other, whether their estate be copyhold or freehold; and in the latter case, no further admittance

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Difference between partition by coparceners and by tenants in common.

* In a late work on Partition, the author states, that a difference exists between partitions by coparceners, and by tenants in common and joint tenants. In the case of the latter, he says, that mutual conveyances or releases should be executed, but that "the case of parceners stands on different grounds." Allnatt, 124. And afterwards the learned author continues: "Partition between coparceners neither amounts to, nor requires, an actual conveyance. It is less than a grant. Its operation is not to pass the land by a fresh investiture of the seisin, for parceners are supposed to be already in possession of the whole lands," &c. 126. Now, without objecting to his definition of the operation of a partition by coparceners, it may be observed, that the learned author appears to be incorrect in confining it to coparceners; (it being equally applicable to a partition by joint tenants;) and in drawing the above distinction between a partition by joint tenants and a partition by coparceners; as, if any really does exist, it seems to be this; that as a joint tenant can only pass his estate to his companion by release, and as the estate of a coparcener may either be conveyed by feoffment, or

vey to each other, and to strangers.

will be necessary. Co. Litt. 200 b. Gilb. Ten. 73. 1 Watk. Cop. [279] or they may enfeoff, Co. Litt. 164 a, 200 b; bargain and sell, grant, or levy a fine, to each other. Gilb. Ten. 73. But they cannot exchange with each other till partition. Touch. 14, 292. But they *must* convey to strangers by some assurance capable of passing the freehold; and if this be done before partition, the stranger will hold the land with the remaining coparceners, as tenants in common. Litt. s. 292—299, and 309.

In the edition of Watkins's Principles of Conveyancing, by Mr. Preston, p. 84, 4th edit. it is said that "coparceners, as well as joint tenants, may accomplish a *quasi* exchange, by way of mutual release, or by a conveyance to uses, in which the uses shall be declared, so as to confer a title according to the allotment; and this is the ordinary practice." But this, it is submitted, would not be an exchange, but simply a partition, as each party would take his own land in severalty, and would thus indeed acquire a different interest in it; but he would not acquire any *new* lands, as is necessary on an exchange. *M'Queen* v. *Farquhar*, 11 Ves. 476. *Attorney-General* v. *Hamilton*, 1 Madd. 223. And it is to be remembered, that although at one time a partition and exchange were considered as nearly similar, *Abel* v. *Heathcote*, 2 Ves. jun. 98, yet that they are now declared to be perfectly distinct modes of assurance. *M'Queen* v. *Farquhar*. *Attorney-General* v. *Hamilton*, *supra*.

How tenants in common may convey to each other, and to strangers.

Tenants in common may enfeoff each other, or they may convey to each other, by any of the usual assurances capable of conveying the freehold; or they may surrender, or devise to each other; but they cannot release to each other, because they have several freeholds. Co. Litt. 200 b. Gilb. Ten. 74. Neither can they exchange* with each other till partition, although it seems they may with strangers. Touch. 292.

They may convey their shares to a stranger by any assurance capable of passing the freehold; and in this case, if it be done before partition, the stranger will hold the lands with the other tenant, as tenants in common. Litt. s. 292—299, s. 309.

Tenants in common of copyholds cannot release to each other, but

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be passed by release, a partition by coparceners has more of the effect of a conveyance than a partition by joint tenants. See the authorities referred to above. The distinction drawn between a partition by coparceners and by tenants in common, is not open to objection. See above.

* This is doubted by Mr. Preston. Watk. Prin. p. 96, 4th edit. But see *above*.

must surrender to each other, as in the case of an estate in severalty. 1 P. Wms. 21. 1 Ld. Raym. 631. 1 Watk. Cop. [380] Cov. edit. 82 and 340.

Words which create a joint-tenancy, and a tenancy in common.

The construction of the words which create an estate in joint tenancy and a tenancy in common, need only be alluded to here. As a general rule, where lands are granted or devised to two or more persons, except husband and wife, to hold to them for any duration of time, without any further words explaining the nature of their estate, they take as joint tenants. See *Stratton* v. *Best*, 2 Bro. C. C. 233. *Staples* v. *Maurice*, 4 B. P. C. 580. *Anon.* Cro. Eliz. 431.

As to the peculiar words which create an estate in joint tenancy and a tenancy in common, see Co. Litt. 190 b. and Harg. not. (4). Cru. Dig. II. 431. IV. 307. VI. 364—472. 2 Com. Dig. 527. 3 V. 4. *Torret* v. *Frampton*, Sti. 434. *Heathe* v. *Heathe*, 2 Atk. 121. *Jaques and Thoroughgood* v. *Collins*, Cro. Car. 75. *Campbell* v. *Campbell*, 4 Bro. C. C. 15. *Perkins* v. *Baynton*, 1 Bro. C. C. 118. *Armstrong* v. *Eldridge*, 3 Bro. C. C. 215. *Prince* v. *Halglin*, 1 Atk. 493. *Shepherd* v. *Gibbons*, 2 Atk. 441. *Maryat* v. *Townley*, 1 Ves. 102. *Stones* v. *Heurtly*, 1 Ves. 165. *Ackerman* v. *Burrows*, 3 Ves. and B. 54. *Rose* v. *Hill*, 3 Burr. 1881. *Stringer* v. *Phillips*, 1 Abr. Eq. 292. *Garland* v. *Thomas*, 1 N. R. 82. *Doe* dem. *Borwell* v. *Abey*, 1 Maul. and S. 428. *Doe* dem. *Calkin* v. *Tomkinson*, 2 Maul. and S. 265. *Brown* v. *Bigg*, 7 Ves. 279. *Edwards* v. *Symons*, 2 Marsh. 24; and *Goodtitle* v. *Oxley*, 7 Dow. and Ry. 535.

It is always usual, in practice, to obviate all doubt by expressly limiting the estate to A. and B. &c. "as joint tenants," or "as tenants in common."

Form of the conveyances.

Having mentioned the different assurances by which joint tenants, coparceners, and tenants in common, may convey their several estates to each other, and to strangers, it is now proper to point out the peculiar form of the conveyances by which a partition is usually effected in practice; and the following observations will be equally applicable to joint tenants, coparceners, and tenants in common.

Three modes. 1. All the partners may convey all the lands to a releasee to uses, and declare the particular uses of each share on his seisin.

There are three modes which are more or less common. 1st. All the parties, whether joint-tenants, coparceners, or tenants in common, may, by deeds of lease and release, convey the lands which they jointly hold, to a releasee to uses, and the uses of the several shares may be respectively declared on the seisin of the releasee: and in this case the covenants for title should be entered into with the releasee to uses. As leaseholds cannot be conveyed to uses, they should be all assigned to a trustee or trustees, upon trust, to assign each allotment to the party to whom the same may have been allotted; and the trustees should then assign the several allotments to the respective parties by separate deeds.

If the first mode of effecting a partition be adopted, there should be

as many parts of the lease and release, or assignment, as there are partitioners, all being made originals: or where this would be very expensive, and economy is an object, the conveyance or assignment should be deposited with some mutual friend, and each party should have an attested copy thereof, and a covenant to produce the original from the person in whose care it is deposited. Or the conveyance or assignment may be acknowledged by all the partners, and enrolled, and a copy of the enrollment taken by each party, and such copy will be admissible in evidence against the parties who have made the enrollment. *Hobhouse* v. *Hamilton*, 1 Scho. & Lef. 207. 1 Phill. Evid. 445 n. 6th edit. But a bargain and sale will not answer the usual purposes of a partition, as no *ulterior* uses can be limited on the seisin of the bargainee. Gilb. Us. 99. 295.

If the property be leasehold, and there be two or more parts of the assignment of the entirety, the assignment of the several allotments should be indorsed on the respective part of the assignment of the entirety, which is delivered to the party entitled to the allotment.

2. All the partitioners may convey the separate shares of each to each.

2d. All the partners, whether joint-tenants, coparceners, or tenants in common, may, by separate deeds of lease and release, convey the several shares allotted to each, in the lands which they jointly hold, to a releasee, to such uses as the party to whom the share conveyed shall have been allotted, may see fit; and in this case the releasors will covenant for title, as to their own acts, with the several releasees.

3. Each partner by a separate deed conveys his moiety, &c. in the lands, to the other.

3d. Each partner, whether a joint-tenant, coparcener, or tenant in common, may, by a separate conveyance or separate conveyances, convey to the other or others of them his undivided moiety or other share in the lands allotted, to the other or others of the said partners, and receive in return a conveyance of the undivided moiety, or other share of the other or others in the lands allotted to him. The mode of assurance usually adopted, if the property is of freehold tenure, is a lease and release, and there must of course be as many leases and releases as there are shares. The covenants for title will be by the releasor or releasors, with the releasee or releasees.

Mode of partitioning copyholds.

If the property be copyhold, all the partners, if they be tenants in common, or coparceners, may surrender the lands to such uses as they may choose; but joint-tenants cannot surrender the lands to each other, they can only release: the form however need not materially differ. Although joint-tenants and coparceners cannot surrender to each other, they may surrender to a stranger; and may therefore surrender to A. B. upon trust to surrender the several shares to the respective uses. But in this case a double fine will be payable; and therefore the more advisable mode for dividing copyholds, when the parties are joint-tenants, is, for each joint-tenant to release to the other by one or

by several deeds. Tenants in common, or coparceners, may surrender their respective moieties, &c. by several surrenders.

If there be any outstanding terms, they should be assigned by the direction of all the parties, by several deeds, to separate trustees, as to each allotment, in trust for each party, to attend the inheritance. Or they may be assigned to one trustee by one deed, with separate declarations of trust, applicable to the several allotments: or there may be a general declaration, that the term shall attend the uses, &c. of the conveyance in fee. If there be but one deed it should be enrolled, and attested copies should be taken, as is before mentioned, respecting the conveyance itself. Assignment of terms.

The most usual, but in many respects the most inconvenient and expensive, of these three modes of partitioning freeholds, is the first. The most advisable, and neatest, seems to be the second;—but the particular mode to be adopted must depend on the peculiar circumstances of the case, the number of the parties, the length of the parcels, and the nature of the property to be divided.

If tenants in common or coparceners wish to effect a partition, and are married, a fine should of course be levied; and although in the case of coparceners, if the partition is equal, a fine is strictly not necessary; see 1 Byth. 195; yet this distinction is not regarded in practice, as it tends to multiply the proofs of the validity of the title, and on a point which, at a long distance of time, it might be very difficult to establish. Dower.

If the respective title-deeds cannot accompany each allotment, attested copies should be taken, and the deeds themselves should remain in the hands of a mutual friend, who must covenant with all the parties for their production; or they may be given over to one of the partners; a similar security being taken from him. Title deeds.

For the more minute differences in the three modes mentioned, and for some other practical remarks on Partition, the reader is referred to the subsequent forms.

OF FREEHOLDS BY JOINT TENANTS, TENANTS IN COMMON, OR COPARCENERS.

PARTITION *of Freehold Lands by* JOINT TENANTS, TENANTS *in* COMMON, *or* COPARCENERS, *the whole of the Premises being conveyed to Releasee to Uses.* (Simple Form.)

Parties.

THIS INDENTURE, made &c. BETWEEN [A.] [*one joint tenant, tenant in common, or coparcener*], of the first part; [B.], of &c. (*a*) [*the other joint tenant, tenant in common, or coparcener*] of the second part; and [*releasee to uses*] of the third part; (*b*) WHEREAS the said [A.] and [B.] are seised of or well entitled to in fee-simple in possession, as joint tenants (tenants in common *or* coparceners) the messuages or tenements, lands, hereditaments and premises, mentioned and described in the two several schedules hereunder written or hereunto annexed, with the appurtenances (*c*). AND WHEREAS, it hath been agreed between the said [A.] and [B.], that a partition should be made of the said messuages or tenements, lands, hereditaments and premises, with the appurtenances, and that the messuages or tenements, lands, hereditaments and premises, mentioned and described in the first schedule

Recital of seisin.

Agreement for partition:

that messuages described in first schedule should be al-

Dower.

(*a*) If the partition be between tenants in common, or coparceners, and either of the parties be married, a fine should be levied, and the wife should be a party to the deed.

History of the title.

(*b*) If the previous history of the title to the premises is recited, or if the partition be made in pursuance of a prior agreement, see the succeeding forms.

REMAINDER OR REVERSION.

(*c*) If the premises to be divided are in remainder or reversion, omit the words "in possession," and after "with the appurtenances," add,

"subject to the estate of [*tenant for life*]."

hereunder written or hereunto annexed, with the appurtenances, should be conveyed to, and be accepted by, the said [A.], in lieu and satisfaction of his undivided moiety or half part or share of and in the whole of the aforesaid messuages or tenements, lands, hereditaments and premises; and that the messuages or tenements, lands, hereditaments and premises, mentioned and described in the second schedule hereunder written or hereunto annexed, with the appurtenances, should be conveyed to, and be accepted by, the said [B.], in lieu and satisfaction of his undivided moiety or half part or share of and in the same messuages or tenements, lands, hereditaments and premises. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and for effectuating the said partition, *And* in consideration of the sum of ten shillings, of lawful money of Great Britain and Ireland, by the said [*releasee to uses*] to the said [A.] and [B.] paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), *They* the said [A.] and [B.], according to their respective shares, estates, and interests therein, and so far as they can or may, but not further or otherwise, *Have*, and each of them, *Hath* granted, bargained, sold, aliened, released and confirmed, and by these presents, *Do*, and each of them, *Doth* grant, bargain, sell, alien, release and confirm unto the said [*releasee to uses*], (in his actual, &c. *reference to lease for a year*), and his heirs, *All those* the said messuages or tenements, lands, hereditaments and premises, which are mentioned and described in the said two several schedules hereunder written or hereunto annexed; Together with (*general words*), &c. *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances (*d*), unto the said (*releasee to uses*),

OF FREEHOLDS BY JOINT TENANTS, TENANTS IN COMMON, OR COPARCENERS.

lotted to A., and those in second schedule to B.

Testatum.

Consideration.

Parcels.

Habendum to the releasee.

(*d*) "But subject to the estate of the said [*tenant for life*], for and during his natural life." REMAINDER OR REVERSION.

OF FREEHOLDS BY JOINT TENANTS, TENANTS IN COMMON, OR COPARCENERS.

and his heirs, *To the uses*, and in manner hereinafter mentioned concerning the same (*a*): (that is to say) as to, for, and concerning the said messuages or tenements, lands, hereditaments, and premises mentioned and de-

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(*d*) If the parties be joint tenants, and married, their wives need not be parties, as no title to dower attaches on the seisin of joint tenants. Co. Lit. 37 b. But if the parties be tenants in common, or coparceners, and either of them be married, the wife of the married party should be a party to the deed, and join in a fine to bar her dower in her husband's share: in such case insert a covenant as follows:

COVENANT TO LEVY A FINE.

"AND for barring and extinguishing all right and title of dower, which the said [ ] the wife of the said [B.] hath, or can or may have, in or out of the undivided moiety or half part or share of him the said [B] of and in the said messuages or tenements, lands, hereditaments and premises hereby granted and released, or otherwise assured, or intended so to be, and their appurtenances, *He* the said [B.] with the consent and approbation of the said [ ] his wife, (testified by her being a party to, and sealing and delivering these presents) *Doth* hereby for himself, his heirs, executors and administrators, COVENANT, promise, and agree, with and to the said [*releasee to uses*], his heirs and assigns, that he the said [B.], and [ ] his wife, shall and will, at the costs and charges of the said [A.] and [B.], and their heirs, executors, or administrators, in or as of Term last, or in or as of Term next, or some other subsequent term, when thereunto requested by the said [*releasee to uses*], his heirs or assigns, acknowledge and levy in due form of law, before his Majesty's justices of the Court of Common Pleas, at *Westminster, unto the said [*releasee to uses*] and his heirs, one or more fine or fines *sur conuzance de droit come ceo*, &c. whereupon proclamations shall be had and made, according to the form of the statute in that case made and provided, and the usual course of fines

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* If the lands are in a county palatine, or in Wales, see 1 Byth. 250.

scribed in the said first schedule hereunder written or hereunto annexed, with the appurtenances; *To the use* of the said [A.] his heirs and assigns for ever. *And* as to, for, and concerning the said messuages or tenements,

OF FREEHOLDS BY JOINT TENANTS, TENANTS IN COMMON, OR COPARCENERS.

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with proclamations, for the assurances of lands and hereditaments in like cases used and accustomed, of the said undivided moiety or half part or share of the said [B.] of and in the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, by such names and descriptions as shall be sufficient to comprise and ascertain the same; AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties to these presents, *That* the grant, release, and confirmation, hereinbefore contained and hereby made as aforesaid, and the said fine or fines so to be acknowledged and levied as aforesaid, *And* all and every other fine and fines, conveyances, and assurances of the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances, or any part thereof, shall operate and enure, and shall be adjudged, deemed, and construed and taken, to operate and enure, *To the uses*, and in the manner hereinafter expressed and declared, of and concerning the same; (that is to say), as to, for, and concerning the said messuages or tenements, lands, hereditaments, and premises, mentioned and described in the said first schedule hereunder written or hereunto annexed, and the appurtenances, *To the use* of the said [A.], his heirs and assigns for ever; and as to, for, and concerning the said messuages or tenements, lands, hereditaments, and premises, described in the said second schedule hereunder written, or hereunto annexed, and the appurtenances, *To such uses*, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said [B.] shall by any deed or deeds, or instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of, and attested by two or more credible witnesses, from time to time, direct,

Declaration that the release and fine shall enure,

as to premises comprised in first schedule to A. in fee,

and as to premises in second schedule, to such uses as B. shall appoint. (Uses to bar dower.)

OF FREEHOLDS BY JOINT TENANTS, TENANTS IN COMMON, OR COPARCENERS.

lands, hereditaments, and premises mentioned and described in the second schedule hereunder written or hereunto annexed, with the appurtenances, *To the use* of the said [B.] his heirs and assigns for ever (*e*). *And* the said [A.] (*f*), so far as relates to one equal moiety or half part or share, of, and in, the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, and so far as relates to the acts and deeds of himself, and of all persons claiming, or to claim by, from, through, or under, or in trust for him, in respect of the same half part or share, but not further or otherwise, *Doth* hereby for himself, his heirs, executors, and administrators; *And* the said [B.], so far as relates to the other equal moiety or half part or share of and in the same messuages or tenements, lands, hereditaments, and premises, with their ap-

Qualified covenants for title.

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limit, or appoint; and in default of and until such direction, limitation, or appointment, and so far as any such direction, limitation, or appointment, if incomplete, shall not extend, *To the use* of the said [B.] and his assigns, during his life, without impeachment of waste, and after the determination of that estate, by forfeiture or otherwise, in his lifetime, *To the use* of the said [*releasee to uses*] and his heirs, during the life of the said [B.], *In trust* for him the said [B.] and his assigns, during his life, and to prevent the present or any future wife of the said [B.] from becoming entitled to dower in or out of the said premises or any part thereof; and from and immediately after the determination of the estate hereinbefore limited to the said [*releasee to uses*] and his heirs, during the life of the said [B.], *To the use* of him the said [B.], his heirs and assigns, for ever.

Uses to bar dower, &c.

(*e*) If the portions are intended to be limited to uses to bar dower as to either party, see *ante*, p. 23; and see the succeeding precedents for all the other usual limitations.

Covenants for title.

(*f*) It is not uncommon in practice, to see a separate set of covenants for title inserted for each allotted share: but with the qualifications here introduced, one set of covenants is sufficient.

OF FREEHOLDS BY JOINT TENANTS, TENANTS IN COMMON, OR COPARCENERS.

purtenances, and so far as relates to the acts and deeds of himself, and of all persons claiming or to claim by, from, through, or under, or in trust for him, in respect of the same half part or share, but not further or otherwise, *Doth* hereby for himself, his heirs, executors and administrators, COVENANT, promise, and agree, with and to the said [*releasee to uses*], his heirs and assigns, in manner and form following; (that is to say) *That* for and notwithstanding any act, deed, matter, or thing whatsoever, by them the said [A.] and [B.], or either of them, or any person or persons claiming by, from, through or under, or in trust for them, or either of them, made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, they the said [A.] and [B.] are, at the time of the sealing and delivering of these presents, lawfully, rightfully and absolutely seised of and in, or well and sufficiently entitled to, the said messuages or tenements, lands, hereditaments and premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, for a good, sure, perfect, absolute and indefeasible, estate of inheritance in fee simple, without any manner of condition, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, charge, defeat, incumber, revoke or make void the same estate: *And* that for and notwithstanding any such act, deed, matter or thing as aforesaid, they the said [A.] and [B.] now have in themselves good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey, the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, with the appurtenances, to the uses and in manner aforesaid, according to the true intent and meaning of these presents: *And* that the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, with their appurtenances, shall and may, from time to time, and at all times hereafter, remain and be *To the uses* hereinbefore declared of and concerning the same, and the rents, issues, and profits thereof, and of every part

OF FREEHOLDS BY JOINT TENANTS, TENANTS IN COMMON, OR COPARCENERS.

thereof, be received and taken accordingly, without any lawful let, suit, trouble, denial, claim, demand, interruption or eviction whatsoever, of or by them, the said [A.] and [B.], or their heirs, or of, from, or by any person or persons whomsoever, lawfully or equitably claiming or to claim by, from, through or under, or in trust for them, or any of them: *And that* free and clear, and freely and clearly and absolutely acquitted, exonerated, released and for ever discharged, or otherwise by the said [A.] and [B.] respectively, and their respective heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights and titles of dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeitures and re-entry, debts of record, debts due to the King's majesty, and all other estates, titles, troubles, charges, debts and incumbrances whatsoever, either already or hereafter to be had and made, executed, occasioned, or suffered by the said [A.] and [B.] respectively, or their respective heirs, or by any person or persons lawfully or equitably claiming, or to claim by, from, through or under, or in trust for them, or any of them, or by his or their acts, means, defaults, or procurements; *And lastly*, that they the said [A.] and [B.] respectively, and their respective heirs, and all and every person or persons whosoever, having or claiming, or who shall or may hereafter have or claim, any estate, right, title, interest, inheritance, use, trust, property, claim or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuages or tenements, lands, hereditaments and premises hereby granted and released, or intended so to be, and their appurtenances, or any of them, or any part thereof, by, from, or under, or in trust for them the said [A.] and [B.] or their heirs, or any of them, shall and will from time to time, and at all times hereafter, upon every reasonable request, at the proper costs and charges of the person or

And for further assurance.

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persons making such request, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered and executed, all such further and other lawful and reasonable acts, deeds, things, devices, conveyances and assurances in the law whatsoever, for the better and more perfectly and absolutely granting, conveying, and assuring of the said messuages or tenements, lands, hereditaments, and premises hereby granted or released, or intended so to be, and every part thereof, with their appurtenances, to the uses and in manner aforesaid, and according to the true intent and meaning of these presents, as by the person or persons making such request as aforesaid, his, her, or their counsel in the law, shall be reasonably devised, advised, and required, so as no such further assurance or assurances contain or imply any further or other covenant or warranty than against the person or persons who shall be required to make or execute the same, and his, her, or their heirs, executors, and administrators' acts and deeds; and so as the party or parties who shall be required to make such further assurance or assurances be not compelled nor compellable, for the making thereof, to go or travel from his, her, or their usual place or places of abode. IN WITNESS, &c.

WHERE EACH PORTION IS CONVEYED BY A SEPARATE DEED, COMMISSION, AGREEMENT, &c.

PARTITION *by* COPARCENERS *of Freehold Lands, where the* PORTION *of each Coparcener is conveyed by a Separate Deed; with Variations, for the Circumstances of a* SUIT IN CHANCERY *having been commenced, and a* COMMISSION *for Partition having been issued; and for the Partition being made in pursuance of a prior* AGREEMENT; *the Conveyance of one of the Shares, being by Lease and Release, with Clauses for rebutting and extending the Effect of the Warranty at Common Law.* (See the next Precedent.)

Date. Parties.

THIS INDENTURE, made the day of, &c. (*a*) BETWEEN [A.] of &c. of the first part; [B.] of &c. and [C.] his wife, of the second part; and [*releasee to uses*] of the third part; (*b*) WHEREAS [*ancestor*], of &c. was at the time of his decease, hereinafter mentioned, and for many years previously thereto, seised or entitled for an estate of inheritance in fee simple in possession, of or to the messuages or tenements, lands, hereditaments, and premises, hereinafter particularly mentioned, and whereof an undivided moiety or half part or share is intended to be hereby granted and released, with their appurtenances; *And* also

Recital of seisin of ancestor;

Year of the king's reign unnecessary.

(*a*) The year of the king's reign need not be mentioned, *Cromwell* v. *Grumsden*, 2 Salk. 462. Yelv. 193; and it will be omitted in the succeeding precedents.

(*b*) If brevity is of consequence, there may be a simple recital of seisin, without reciting the history of the title, as follows:

Simple recital of seisin as joint tenants, tenants in common, or coparceners.

"WHEREAS the said [A.] and [B.], are seised or entitled in fee simple in possession, as joint-tenants (tenants in common, *or* coparceners), of or to ALL, &c. [*parcels*]." See *ante*, p. 20.

of or to a certain messuage or tenement and lands, situate at &c. and a piece or parcel of land, situate &c., with their appurtenances: AND WHEREAS the said [*ancestor*] departed this life on or about the day of intestate (*c*), and upon his decease the said messuages, or tenements, lands, hereditaments and premises, of or to which he was so seised or entitled as aforesaid, and their appurtenances, descended upon the said [A.] and [C.], the wife

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and his death intestate, and descent of the premises upon his two children.

(*c*) If the premises were devised to the parties, the will should be recited as in the succeeding precedents.

Devise of the premises.

If a commission has issued by the order of the Court of Chancery, the proceedings should be recited as follows:

"AND WHEREAS the said [A.], on or about the day of , filed a bill in the High Court of Chancery, against the said [C.], praying (amongst other things), that a fair and equal partition and division, might be made of the said messuages or tenements, lands, hereditaments, and premises, between the said [A.] and [C.], according to their respective rights and interests therein; *And* that a commission might issue for that purpose, with the usual directions; *And* that the parts and shares of the said messuages or tenements, lands, hereditaments, and premises, which should be allotted to the said [A.] and [C.] under the said commission, might be enjoyed by them in severalty; *And* that proper conveyances thereof might be executed. AND WHEREAS the said [B.] appeared and put in his answer to the said bill. *And* by an order made in the said cause, and dated the day of , *It was ordered and decreed*, that a partition be made of the said messuages or tenements, lands, hereditaments, and premises, into two equal moieties between the said [A.] and [B.]; *And* that a commission or commissions, should issue directed to certain commissioners, to be therein named for that purpose, and if the said parties differed about the names of the commissioners, in the commission or commissions to be issued, or any other matter relating to the issuing of such commission

Recitals of a bill praying a partition, the issuing of a commission for that purpose, and the proceedings thereupon.

Marriage settlement, whereby one moiety was settled to such uses as husband and wife should jointly appoint;

of the said [B.], then [*maiden name*], spinster, as his only children and co-heirs at law. And whereas, by indentures of lease and release, bearing date respectively on or about the and days of , the release being made or expressed to be made between the said [C.], the wife of the said [B.] by her then name and description of [*maiden name*] of the first part; the said [B.] of the second part; and [*two trustees*] of the third part; the undivided moiety or half part or share of the said [C.] the wife of the said [B.], of and in the messuages or tenements,

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or commissions, the said master should settle the same between them. *And it was ordered*, that the said commissioners should respectively make a division of the said messuages or tenements, lands, hereditaments, and premises, with the appurtenances, into two equal moieties, and should make the same by metes and bounds, where they should see occasion; *And* all deeds, writings, surveys, and muniments, relating to the said estates, in the custody or power of any of the parties, were to be produced before the said commissioners upon oath, as the said commissioners should direct; *And it was further ordered*, that the said commissioners should examine witnesses on interrogatories, or otherwise relating to the matters in question, as they should think fit; *And* that the said commissioners should allot one moiety of the said hereditaments and premises to the said [A.], to be enjoyed by him in severalty, and one other moiety thereof to the said [C.], to be enjoyed by him in severalty; *And it was further ordered*, that after such partition as aforesaid should have been made, the said [A.] and [C.] should convey such several moieties to each other respectively to be held in severalty; *And* that if the parties should differ about the conveyances and assurances to be executed for that purpose, the said master should settle the same. And whereas in pursuance of the said order, a commission of partition was issued directed to W. F., esquire, J. L., clerk, E. K., esquire, and D. M., esquire, whereby the said commissioners, or any three or two of them,

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lands, hereditaments, and premises hereinafter described, and their appurtenances, was (in consideration of the marriage then intended, and shortly afterwards solemnized between the said [B.] and [C.] his wife, and for other the considerations in the said indenture of release mentioned) conveyed by the said [C.] the wife of the said [B.] to the said [*trustees*] and their heirs, *To the use* of such person or persons, for such estate or estates, and in such manner, as the said [B.] and [C.], his wife should by any deed or writing to be by them sealed and delivered in the presence

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were authorised and empowered to go to, enter upon and walk over, and survey the said messuages or tenements, lands, hereditaments, and premises, and the same to separate, set apart, divide, and allot: *And* for that purpose, to examine separately and apart, upon their corporal oaths, to be taken upon the Holy Evangelists, upon interrogatories or otherwise, as they should think fit, such witnesses as should be produced to them by the said parties or any of them: *And* by the said commission the said commissioners, or any three or two of them, were commanded to separate, set apart, and divide, the said messuages or tenements, lands, hereditaments, and premises, with the appurtenances, into two equal moieties, and to make the division thereof by metes and bounds, where they should see occasion; *And* allot one moiety of the said premises to the said [A.], to be enjoyed by him in severalty; *And* the other moiety thereof, to the said [C.], to be enjoyed by him in severalty; *And* to certify and return into the said Court of Chancery, without delay, their acts and proceedings in the premises: AND WHEREAS, the said commissioners, by their certificate * bearing date the day of , certified to the said Court, that having entered upon and surveyed the said

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* Exceptions cannot be taken to the return of commissioners, on the ground of inequality of value in the lots. Wherever the commissioners have behaved improperly, a motion should be made to suppress the return. *Jones* v. *Totty*, 1 Sim. 136.

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of, and attested by two or more credible witnesses, from time to time jointly direct, limit, or appoint; and in default of and until such direction, limitation, or appointment, *To the use* of the said [*trustees*], their heirs and assigns, during the joint lives of the said [B.] and [C.] his wife, upon trust that the said [*trustees*] or the survivor of them, or the heirs or assigns of such survivor, should receive the rents, issues, and profits of the said moiety or half part or share, thereby conveyed, as the same should become due, and should pay and apply the same rents,

and until such appointment, upon trust for the separate use of wife.

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messuages, &c. and having examined the witnesses who came before them in the manner directed by the said commission, they had proceeded to divide, separate, and allot the said messuages or tenements, lands, hereditaments, and premises, with the appurtenances; *And* that they had accordingly allotted a certain messuage or tenement, situate and being at, &c. and two closes known by the name of , and situate, &c. &c. to the said [A.], in full for his said undivided moiety or equal half part or share of and in the said messuages or tenements, lands, hereditaments, and premises, with the appurtenances; *And* that they had also allotted a certain messuage or tenement, situate at, &c. &c. to the said [B.], in full for his said undivided moiety, or equal half part or share, of and in the said messuages or tenements, lands, hereditaments, and premises, with the appurtenances: AND WHEREAS by an order of the said Court of Chancery, bearing date the day of , the said certificate of the said commissioners was confirmed *nisi*: *And* by another order of the same Court, bearing date the day of , the said last mentioned order was made absolute. AND WHEREAS the said [A.] and [C.], have agreed that the said partition and division so made by the said commissioners as aforesaid, should be carried into effect. AND WHEREAS the said [A.] is desirous that the said messuages or tenements, lands, hereditaments, and premises, which have been so allotted to him by the said commissioners as aforesaid, and their appurte-

Order for confirmation of the commissioners' certificate.

Agreement that the partition should be carried into effect, and that the premises should be conveyed accordingly.

issues and profits to and for the sole and separate use and benefit of the said [C.] the wife of the said [B.], as in the said indenture of release is mentioned; and after the decease of such one of them the said [B.] and [C.] his wife, as should first happen to die, *To the use* of the survivor of them the said [B.] and [C.] his wife, his or her heirs and assigns for ever. AND WHEREAS the said [A.] and [B.] and [C.] his wife, have agreed to make a partition and division of the several messuages or tenements, lands, hereditaments and premises hereinbefore mentioned, and their appurtenances, should be conveyed to the uses herein after declared concerning the same. NOW THIS INDENTURE WITNESSETH, &c. (*as above*).

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Agreement for partition, and that valuation has been made.

If the partition is effected according to a prior agreement, the agreement should be recited as follows, with variations according to the particular agreement:

"AND WHEREAS by articles of agreement, bearing date on or about the day of , and made, or expressed to be made, between the said [A.] of the one part, and the said [B.] of the other part; it was agreed that a partition and division of the said messuages or tenements, hereditaments, and premises, should be made by T. D. of, &c. gentleman, and C. M. of, &c. gentleman: *And* that the said T. D. and C. M. should decide and determine, whether any and what sum of money should be paid for equality of partition, and by which of the parties such money should be so paid: *And* that, for further enabling the said T. D. and C. M. to make such partition, it should be lawful for them to make a survey of the said premises, and to cause a map or plan thereof to be drawn: *And* that if the said T. D. and C. M. should differ in opinion, touching the said intended partition, or the money to be paid for equality, then and in every such case, it should be lawful for the said T. D. and C. M. to appoint an umpire, to determine and decide upon the matter of difference: *And* that the determination and decision of such umpire upon the said matter, should be binding and

Recital of agreement for partition, and the acts of the parties in pursuance thereof.

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purtenances, and for that purpose have caused a survey and valuation to be made of the same; and it hath been finally agreed, that the said messuage or tenement, and lands, situate at aforesaid; and the said piece or parcel of land situate at aforesaid, with their appurtenances, should from thenceforth exclusively belong to the said [A.] as her allotted share in the several hereditaments hereinbefore mentioned or referred to; *And* that the messuages or tenements, lands, hereditaments, and premises hereinafter particularly described, and of which an undivided moiety

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conclusive upon the said [A.] and [B.], and the said T. D. and C. M. And whereas soon after the date and execution of the said recited agreement, the said T. D. and C. M. did cause a survey and valuation to be made of the said messuages or tenements, hereditaments, and premises, so agreed to be divided as aforesaid: *And* did decide and determine that the messuages or tenements, hereditaments, and premises, hereinafter described and intended to be hereby granted and released, and their appurtenances, should belong to the said [A.]; *And* that the remainder of the said messuages or tenements, hereditaments, and premises, and their appurtenances, should belong to the said [B.]. *And* that the sum of £ should be paid by the said [B.] to the said [A.] for equality of partition. And whereas the said [A.] and [B.] have agreed to carry the partition and division which has been so made by the said T. D. and C. M. as aforesaid, into effect, and in pursuance and part performance of the same agreement, the said [B.] hath this day paid to the said [A.] the sum of £ , in satisfaction of the like sum so directed to be paid to him by the said [B.], by way of equality of partition, as hereinbefore is mentioned, as he the said [A.] doth hereby admit and acknowledge. And whereas in pursuance and further performance of the said agreement, by indentures of lease and release, the lease bearing date the day before the day of the date of the release, and the release bearing even date with these presents, &c. (*Recite the conveyance from [B.] to [A.] of [B's.] moiety in the*

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or half part or share is intended to be hereby granted and released, with their appurtenances, should from thenceforth exclusively belong to the said [B.] and [C.] his wife, as their allotted share in the said several hereditaments hereinbefore mentioned or referred to; AND WHEREAS, in pursuance and part performance of the said agreement for partition, by an indenture of appointment, bearing even date with these presents, and made or expressed to be made between the said [B.] and [C.] his wife of the one part, and the said [A.] of the other part, and duly executed by the said [B.] and [C.] his wife, in the presence of and attested by two witnesses, the said [B.] and [C.] his wife, have, in pursuance and in exercise of the power or authority to them for that purpose given in and by the said hereinbefore recited indenture of release, directed, limited, and appointed that the said undivided moiety or half part or share of them the said [B.] and [C.] his wife, of and in the said messuage or tenement, and lands, situate at aforesaid, and of and in the said piece or parcel of land, situate at aforesaid, and their appurtenances, shall from henceforth go, remain, and be *To the use* of the said [A.] her heirs and assigns for ever. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement for partition, and in consideration of

Indenture of appointment, whereby B. and C. appoint a moiety of the premises allotted to A., to her in fee.

Testatum.

Consideration.

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premises allotted to [*A.*]). NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and for further carrying into effect the said partition; *And* in consideration of the said sum of £ , (*a*) so paid by the said [B.] to the said [A.] as hereinbefore is mentioned; *And* of the conveyance so made by the said [B.] to the said [A.] by the said lastly hereinbefore recited indentures as aforesaid, HE the said [A.]," &c. (*Conveyance from* [*A.*] *to* [*B.*] *of* [*A's.*] *moiety in the premises allotted to* [*B.*], *as above.*)

Testatum.

(*a*) *Ad valorem* duty on conveyances on sales is payable on this sum, if it amounts to 300*l.* See 55 Geo. 3. c. 184, Schedule, "Partition;" and *post.*

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the sum of ten shillings of lawful money of Great Britain and Ireland, to the said [A.] by the said [*releasee to uses*] paid at or before the signing, sealing, and delivery of these presents, (the receipt whereof is hereby acknowledged,) SHE, the said [A.], at the request and by the direction of the said [B.] and [C.] his wife (testified by their respectively being parties to, and sealing and delivering these presents), *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*releasee to uses*], in his actual, &c. (*reference to lease for a year*), and his heirs, ALL THAT the undivided moiety or equal half part or share of her the said [A.], of and in ALL, &c. (*parcels and general words*), *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said undivided moiety, or equal half part or share, hereby granted and released, or intended so to be, of and in the said messuages or tenements, lands, hereditaments, and premises, hereinbefore particularly described, and their appurtenances, unto the said [*releasee to uses*] and his heirs, *To* such and the same uses, upon and for such and the same trusts, intents and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations, as in and by the said hereinbefore recited indenture of release, are expressed and declared, of and concerning the other undivided moiety, or half part or share, of and in the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances. *And* the said [A.] doth hereby for herself, her heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*releasee to uses*] and his heirs, that for and notwithstanding any act, deed, matter, or thing whatsoever, by her the said [A.] made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, she the said [A.] is at the time of the sealing and delivering of these presents, lawfully and rightfully seised of and in, or well entitled to, the said undivided moiety, or half part or share hereby granted and released, or intended so to be, of and in the said messuages or tenements, lands, hereditaments, and premises hereinbefore particularly described, and their appurtenances, without any manner of

Parcels.

Habendum.

To the same uses as are declared by the recited indenture.

Covenants for title.

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condition, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, defeat, incumber, revoke, or make void the same estate. *And that* for and notwithstanding any such act, deed, matter, or thing as aforesaid, she the said [A.] now hath in herself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey the said undivided moiety, or half part or share, hereby granted and released, or intended so to be, of and in the said messuages or tenements, lands, hereditaments, and premises hereinbefore particularly described, and their appurtenances, to the uses, upon the trusts, and in the manner aforesaid, according to the true intent and meaning of these presents. *And that* the said undivided moiety, or half part or share hereby granted and released, or intended so to be, of and in the said messuages or tenements, lands, hereditaments, and premises, hereinbefore particularly described, and their appurtenances, shall from time to time, and at all times hereafter, remain and be, to the uses, upon the trusts, and in manner aforesaid, and be peaceably and quietly held, occupied, possessed, and enjoyed, and the rents, issues, and profits thereof be received and taken accordingly, without any lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by her the said [A.], or her heirs, or any person or persons whomsoever, lawfully or equitably claiming or to claim by, from, or under or in trust for her, them, or any of them. *And that*, free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [A.] her heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights and titles of dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeiture, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the King's majesty, and of, from, and against all

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other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had and made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered by the said [A.] or her heirs, or any person or persons lawfully or equitably claiming, or to claim, by, from or under, or in trust for her, them, or any of them. *And further*, that she the said [A.] and her heirs, and all and every person and persons whosoever having, or claiming, or who shall or may hereafter have, or claim, any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, in, to, or out of or upon the said undivided moiety, or half part or share hereby granted and released, or intended so to be, of and in the said messuages or tenements, lands, hereditaments, and premises, hereinbefore particularly described, and their appurtenances, or any part thereof, by, from, or under, or in trust for her the said [A.] or her heirs, shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the costs and charges of the said [B.] and [C.], their heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely granting, conveying, and assuring of the said undivided moiety, or half part or share hereby granted and released, or intended so to be, of and in the said messuages or tenements, lands, hereditaments, and premises hereinbefore particularly described, and their appurtenances, to the uses, upon the trusts, and in manner aforesaid, according to the true intent and meaning of these presents, as by the said [*releasee to uses*], his heirs or assigns, or his or their counsel in the law, shall be reasonably devised, or advised, and required, so as no such further assurance or assurances contain or imply any further or other covenant or warranty than against the person or persons who shall be required to make or execute the same, and his or their heirs, executors, and administrators' acts and deeds; and so as the

And for further assurance.

party or parties, who shall be required to make or execute such further assurance or assurances, be not compelled nor compellable, for the making or executing thereof, to go or travel from his, her, or their usual place or respective places of abode (*a*). IN WITNESS, &c.

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(*a*) There are several other clauses, which are sometimes inserted in deeds of this nature, which may here be given or adverted to.

Releases.

If the parties, or either of them, have been in possession of the premises, and in the receipt of the rents and profits thereof, &c. a mutual or several release may be here inserted. If it be a mutual release, this clause may be repeated, transposing the names.

"AND the said [A.] for himself, his heirs, executors, and administrators, doth hereby remise, release, and for ever quit claim unto the said [B.], his heirs, executors, and administrators, all and all manner of actions, suits, causes of actions and suits, accounts, reckonings, claims, and demands whatsoever, both at law and in equity, which he the said [A.] now hath, or which he, his heirs, executors, or administrators, at any time or times hereafter shall or may have or claim, or be entitled to against the said [B.], his heirs, executors, administrators, or assigns, for or in respect of the possession, occupation, rents, and profits of the said hereditaments and premises hereby granted and released, or any part thereof, or for or by reason or in respect of any other matter, cause, or thing relating thereto, prior to the date of these presents."

Warranty on a partition between coparceners.

If an action had been commenced against coparceners, they must all have been impleaded; and if the land had been recovered from them, they would all have been equal sufferers. Now the law will not put coparceners in a worse situation after partition than before; and it has therefore been determined, that the same burden shall attend the several parts of the lands, when divided, as would have affected them before the partition; and consequently, on every partition of the estate of coparceners, a warranty and a condition is annexed to each part; and by force of the one, if any coparcener be evicted from her part, she may vouch the other coparcener or coparceners; and of the other, she may have recompense out of the part or parts of the other coparcener or coparceners. Litt. s. 262. 263. Co. Litt. 173 b. 174 a. 384 a. *Bustard's case*, 4 Rep. 121 b.

Queries by Lord Coke on a

Lord Coke raises two questions on this. First, Whether, if the whole

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partial eviction of the several estate of one of the coparceners.

estate in part of the severalty of one parcener, be evicted by a title paramount, the whole partition be avoided?

And second, If but part of the estate of one parcener be evicted, as an estate in tail or for life, leaving a reversion in the coparcener, whether that should avoid the partition in the whole?

To the first he answers, that if the whole estate in part of the severalty be evicted, that shall avoid the partition in the whole, be it of a manor that is entire, or of acres of ground, or the like, that be several; for the partition in that case implies, for this purpose, both a warranty and a condition in law, and either of them is entire, and giveth an entry in this case into the whole.

And to the second he answers, that if any estate of freehold be evicted from the coparcener in all or part of her severalty, it shall be avoided in the whole. As if A. be seised of one acre of land in possession, and of the reversion of another, expectant upon an estate for life, and he disseise the lessee for life, who makes continual claim. A. dies seised of both acres, and hath issue two daughters; partition is made, so as the one acre is allotted to the one, and the other acre to the other; the lessee enters: the partition is avoided for the whole. See Litt. s. 262. Co. Litt. 174 a.

Yet there is a diversity between the warranty, and the condition which the law creates upon the partition. Where one coparcener takes benefit of the condition in law, she defeats the partition in the whole. But when she vouches, by force of the warranty in law, for part, the partition shall not be defeated in the whole, but she shall recover recompense for that part. And there is also another diversity between a recovery in value by force of a warranty upon an exchange, and upon a partition. For upon the exchange, a full recompense shall be recovered for all that is lost. But upon a partition, the moiety, or half of that which is lost, shall only be recovered, to the end that the loss may be equal. See Co. Litt. 174 a.

Warranty annexed to the estate of joint tenants and tenants in common in a partition under the 31 stat of Hen. 8, but not otherwise.

By the 31st Hen. VIII. c. 1, s. 3, this peculiarity of the estate of coparceners is extended to partitions by joint tenants and tenants in common, made under the direction of that statute; that is to say, a partition by writ *de partitione facienda;* it being enacted, that joint tenants, and tenants in common, of an estate or estates of inheritance in their own right, or in the right of their wives, of any manors, lands, tenements or hereditaments, and their heirs, after such partition made, shall have aid of the other, or of their heirs, to the intent to deraign the warranty paramount, and to recover for the rate, [*i. e. pro rata*, Co. Litt. 174 a] as is used between coparceners, after partition made, by the order of the common law. But a warranty is not attached to any other partition by joint tenants and tenants in common; and this is another reason in favour of their obtaining partition, through the medium of a court of equity.

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On alienation in fee, the warranty does not continue in favour of the alienee.

But if a coparcener, after partition, alien his share to a stranger in fee, the privity of estate is thus destroyed between the coparceners, and the warranty ceases, for the benefit of such alienee of the coparcener, and, in case of eviction, he cannot recover any recompense, either upon condition in law or warranty in law, by force of the partition. Litt. s. 202. Co. Litt. 174 a. 384 b. 385 a. But the lands so purchased by the stranger remain still liable to the implied warranty in favour of a coparcener or her heirs, until they also alien in fee. Noy's Max. 78. 156. 9th ed. *Bustard's case, ubi supra.* Touch. 293.

Practical result of the principle.

The consequence of this very inconvenient principle in practice is, that on a purchase from a coparcener, it is not only necessary to inspect the title of such vendor; but it is also the duty of the counsel for the purchaser, to demand the production of the title to the other allotments. If, however, the other coparceners have aliened their shares, this is certainly not necessary; for although the alienee of a coparcener is liable to the other coparceners, yet he is not liable to *their alienees*; so that, on every alienation, the liability is progressively lessening: and when once all the shares have been parted with by their respective owners, the privity of estate being at an end, the liability also ceases. But if one coparcener still retains his original share, his title must be inspected; as, in case of eviction, he can enter upon the shares of all the other coparceners and their alienees.

Mr. Preston, 2 Abs. 75, must be incorrect, therefore, when he says, that "when one of the coparceners aliens in fee, or even in tail, while the title is held under the entail, the warranty ceases, and consequently the title to the lands given to the other parceners, on the partition, need not be investigated. Even the purchaser of the fee will be discharged from the warranty, and consequently cannot be affected by it;" as it is submitted, that the authorities above cited establish, that an alience of a coparcener is clearly liable to the other coparceners. And see 1 Abs. 304.

If the title of the other allotments can be obtained, it should be inspected; but it is often very difficult to furnish it; and for this reason the demand is sometimes dispensed with in practice.

Exchanges and partitions under powers.

Mr. Sanders says, that "where exchanges are effected by the means of powers operating under the statute of uses, there can be no implied right of entry on eviction, as on an exchange at common law; because the right of entry must be descendible to the heir, and not transmitted from *cestui que use* to *cestui que use* in succession; and the entry by *cestui que use* for life could not acquire for him a fee simple, as of his old estate." 2 Us. and Tr. 70. 4th edit. And this law is equally applicable to a partition under powers for partition.

If the parties wish to restrain the effect of the warranty in law which

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attends a partition between coparceners, and which is oftentimes very inconvenient, the following clause is sometimes inserted after the covenants for title:—

Declaration to prevent the effect of the warranty.

"AND *it is hereby agreed and declared between and by* the said parties to these presents, that the warranty and condition in law and mutual right of entry which is incident to a partition by coparceners at the common law, shall not affect, or attach, or belong to the parties hereto, or to the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, or to the partition hereby made; *And* that such partition shall not by reason of any entry or eviction, in, to, or of either of the said allotted portions, by title paramount, or by any other title whatsoever, be disturbed, avoided, or defeated, nor shall the enjoyment and possession of the other allotted portion by the party to whom the same is hereby conveyed, her heirs or assigns, be thereby in any wise interrupted, affected, or disturbed. *And* that the title of neither of them the said [A.] and [B.], her heirs or assigns, to the messuages or tenements, lands, hereditaments, and premises, hereby conveyed to her and them as aforesaid, shall in any manner depend upon the title of the other of them, the said [A.] and [B.], her heirs or assigns, to the messuages or tenements, lands, hereditaments, and premises, hereby conveyed to her or them as hereinbefore is mentioned."

It seems that covenants for title will restrain the implied warranty on a partition by coparceners.

The above clause is occasionally adopted in practice; but it is certainly worthy of consideration whether, if the usual covenants for title be inserted, it is not unnecessary. The words *grant* and *give* were held, in some conveyances, to imply a warranty of the premises conveyed; but it has long been settled, that if they had any such operation, it might be restrained and qualified by express covenants on the part of the grantor or devisor, inserted in the grant or gift. See Butl. not. (1) 384 a. 1 Byth. 424. 452. It would seem, therefore, that if the usual covenants for title be inserted in a partition by coparceners, the implied warranty at common law will be rebutted, and the covenantor's liability will be confined to the extent of his covenant. If this suggestion should have any weight, the above clause would be useless; and if covenants would not have the effect stated, it is extremely doubtful whether such a declaration would have the operation intended to be effected by it; as if a warranty on a partition cannot be restrained in the

same way as other implied warranties, the warranty on a partition must be considered as an indestructible property of an estate in coparcenary, the consequences of which cannot be prevented by any agreement between the parties. WARRANTY.

The following clauses, extending the right of entry to the assignees of each party, are sometimes inserted. Mr. Sugden, however, very justly questions their validity, on the ground of their having a tendency to a perpetuity. Sug. Gilb. 179, n.

That if A., his heirs, &c. shall be evicted, partition shall be void, and there shall be a right of reentry upon the other share.

"And *it is hereby agreed and declared*, between and by the said parties to these presents, and these presents are upon this express condition, That if the said [A.], her heirs or assigns, or any person or persons lawfully claiming, or to claim, by, from, or under her, them, or any of them, shall at any time hereafter (without her or their wilful neglect or default), be evicted or turned out of the possession of the said messuages or tenements, hereditaments, and premises hereby released, or intended so to be, by any person or persons having, or lawfully or equitably claiming, any estate, right, title, or interest in, to, or out of the same messuages or tenements, lands, hereditaments, and premises, or any part thereof, or if the said [A.], her heirs or assigns, or any person or persons lawfully claiming or to claim, by, from, or under her, them, or any of them, shall be prevented or hindered from holding or enjoying the same, or every part thereof, according to the true intent and meaning of these presents, Then and in such case, these presents and the partition hereby agreed to be made between the said [A.] and [B.], shall cease, determine, and be void and of no effect whatsoever. *And that* in every or any such case, it shall and may be lawful to and for the said [A.], her heirs or assigns, or any other person or persons lawfully claiming or to claim by, from, or in trust for or under her, them, or any of them, into and upon the said messuages or tenements, lands, hereditaments, and premises hereinbefore mentioned to have been allotted and accepted by her the said [B.], to enter, and to have, hold, and enjoy the same; *And* to have, receive, and take the rents, issues, and profits thereof, together with the said [B.] and her heirs and assigns, for their own use, coparceners, or as tenants in common, in equal shares as

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in such and the same manner to all intents and purposes whatsoever, as she or they might or could have done, if these presents had not been made or executed, and the partition hereby agreed upon had never been effected; any thing herein contained to the contrary thereof in any wise notwithstanding." (*And then repeat the clauses, transposing the names of the parties.*)

BY COPARCENERS OF FREEHOLD LANDS.

PARTITION *by* COPARCENERS *of Freehold Lands, where the Portion of each Coparcener is conveyed by a separate Deed: the Conveyance of the other Share, being by Appointment.* (See the last Precedent.)

Parties.

THIS INDENTURE, made, &c.; BETWEEN [B.] of, &c. and [C.] his wife, of the one part, and [A.] of, &c. of the other part.

Recital of seisin of ancestor.

WHEREAS [*ancestor*] was at the time of his decease hereinafter mentioned, and for many years previously thereto, seised or well entitled for an estate of inheritance in fee simple in possession, of or to the messuages or tenements, lands, hereditaments, and premises, hereinafter particularly described, and whereof an undivided moiety, or half part or share, is intended to be hereby appointed; *And also* of or to a messuage or tenement, lands, and premises, situate at , and a messuage or tenement, situate at , and divers pieces or parcels of land or ground, situate at , and their appurtenances.

Death of ancestor, and descent of the premises, and marriage settlement of C.

(*Here recite the death of the ancestor and the descent of the premises to the said* [*A.*] *and* [*C.*] *the wife of the said* [*B.*], *as co-heirs, and the marriage settlement of the said* [*C.*], *and the agreement for partition,* as ante, 29—35.)

Indentures of lease and release, whereby a moiety of the other premises was conveyed by A. to the uses by the

AND WHEREAS in pursuance and part performance of the said agreement for partition, by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with these presents, and made or

BY COPARCENERS OF FREEHOLD LANDS.

expressed to be made between the said [A.] of the first part; the said [B.] and [C.] his wife, of the second part; and [*releasee to uses*], of the third part; the said [A.] hath granted, released, and conveyed, unto the said [*releasee to uses*] and his heirs, the said undivided moiety, or half part or share of the said [A.], of and in the said messuage or tenement, lands, and premises, situate at , and the said messuage or tenement, situate at , and divers pieces or parcels of land or ground, situate at , with their appurtenances, *To hold* the same unto the said [*releasee to uses*] and his heirs, to such and the same uses, upon and for such and the same trusts, intents, and purposes, and subject to such and the same powers, provisoes, agreements, and declarations, as in and by the therein and hereinbefore recited indenture of release and settlement were limited, declared, and contained, of and concerning the other undivided moiety or half part or share of and in the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement for partition, and in consideration of the premises, *They* the said [B.] and [C.] his wife, pursuant to, and by force and virtue, and in exercise and execution of the power or authority to them for this purpose given or limited, in and by the said hereinbefore recited indenture of release and settlement, of the day of , and of every other power or authority in any wise enabling them in this behalf, *Do* by this present deed or instrument in writing, by them sealed and delivered in the presence of the two credible persons whose names are intended to be hereupon indorsed as witnesses, attesting the sealing and delivery of these presents, by them, the said [B.] and [C.] his wife, direct, limit, and appoint, that *All that* the said undivided moiety, or half part or share of the said [B.] and [C.] his wife, of and in ALL that, &c. [*parcels*], *And* of and in all and singular outhouses, (*general words—see* 1 Byth. 656.) shall from henceforth go, remain, and be *To the use* of the said [A.], her heirs and assigns for ever (*a*). *And* the said [B.]

marriage settlement, declared of the other moiety of the said premises.

Testatum.

Consideration. Appointment of the premises to A. in fee.

(*a*) Where a person has both a power and an interest, as [C.] in this

It is usual to exercise power

BY COPARCENERS OF FREEHOLD LANDS.

doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [A.], her heirs and assigns, in manner following: That for and notwithstanding any act, deed, matter, or thing whatsoever, by the said [B.] and [C.] his wife, or either of them, or any person or persons claiming by, from or under, or in trust for them or either of them, made, done, omitted, committed, or knowingly or willingly suffered to the contrary, the power or authority hereinbefore recited, and hereby exercised, or intended so to be, was well and effectually created by the hereinbefore recited indenture of release and settlement, of the day of , and that the same is now in full force, and in no wise suspended, charged, affected, or become void or voidable. *And that* for and notwithstanding any such act, deed, matter, or thing, as aforesaid, they the said [B.] and [C.] now have in themselves good right, full power, and lawful and absolute authority, to appoint the said undivided moiety or half part or share, hereby appointed or intended so to be, of and in the said messuages or tenements, lands, hereditaments, and premises hereinbefore particularly described, with the appurtenances, unto the said [A.], her heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents: *And that* for and notwithstanding any such act, deed, matter, or thing, as aforesaid, it shall and may be lawful, to and for the said [A.], her heirs and assigns, from time to time,

Covenant by B. that the power is good.

Covenants for title.

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and convey interest; but where the interest cannot be conveyed without a fine or recovery, the conveyance is dispensed with.

precedent, it is usual not only to have the power exercised, but also to have the interest conveyed, because the power *may* have been suspended or destroyed, or *may* have been defectively created. But where the interest cannot be conveyed without a fine or recovery, a purchaser cannot require a conveyance of the interest. See Sug. Pow. 197. 4th ed. Where the power has been well created, and a conveyance of the interest demands the additional expense of a fine or recovery, as in this precedent, [C.] being a married woman; a simple exercise of the power may be relied upon to effect the partition. If any doubt as to the suspension or destruction of the power exists, the interest should certainly be conveyed; and the proper form will be found under the title PURCHASE.

BY COPARCENERS OF FREEHOLD LANDS.

and at all times hereafter, peaceably and quietly to have, hold, occupy, possess, and enjoy the same undivided moiety or half part or share, with the appurtenances, and to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, claim, and demand whatsoever, of or by them the said [B.] and [C.], or either of them, or their or either of their heirs, or any person or persons whomsoever lawfully or equitably claiming or to claim, by, from, or under, or in trust, for them or any of them; *And that* free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said [B.] and [C.], their heirs, executors and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, appointments, limitations, jointures, dowers, right and title of dower, uses, trusts, entails, wills, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, reentries, cause and causes of forfeiture and reentry, debts of record, debts due to the king's majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already or hereafter to be had, made, executed, occasioned, or suffered by the said [B.] and [C.], or their or either of their heirs, or by any person or persons lawfully or equitably claiming or to claim by, from, or under, or in trust for them, or any of them; *And further*, that they the said [B.] and [C.] and their heirs, and all or every other person or persons having or claiming, or who shall or may hereafter have or claim any estate, right, title, or interest whatsoever, either at law or in equity, in, to, or out of the same undivided moiety or half part or share and premises, or any part thereof, by, from, or under, or in trust for the said [B.] and [C.], or their heirs, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, and at the costs and charges of the said [A.], her heirs or assigns, make, do, and exe-

For further assurance.

BY COPARCENERS OF FREEHOLD LANDS.

cute, or cause and procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, appointments, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely appointing, conveying, and assuring of the same undivided moiety or half part or share and premises, and every part thereof, with the appurtenances, *To the use* of the said [A.], her heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [A.], her heirs or assigns, or her or their counsel in the law, shall be reasonably devised, advised, and required, so as no such further assurance or assurances contain or imply any further or other covenant or warranty, than against the person or persons who shall be required to make and execute the same, and his, her, or their heirs, executors, or administrators' acts and deeds, and so as the party or parties who shall be required to make or execute such further assurance or assurances, be not compelled or compellable to go or travel from his, her, or their usual place or places of abode. IN WITNESS, &c.

OF FREEHOLDS BY TENANTS IN COMMON

PARTITION *of* FREEHOLDS *by* TENANTS IN COMMON, *all the Parties conveying the* SEPARATE SHARE *of each of them by* SEPARATE DEEDS; (*being one of three Deeds*) (*a*).

Parties.

THIS INDENTURE made, &c. BETWEEN [A.] of, &c. of the first part; [B.] of, &c. of the second part; [C.] of, &c. of the third part; and [*releasee to uses*] of the fourth part: WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , the release being made, or expressed to be made, between [Z. Y.], therein described, of the first part, [D. Y.], therein described, of the second part, and [*ancestor*], therein described, of the third part; a certain messuage or tenement, hereditaments and premises, called Moor Court, situate and being in the parish of , in the county of [Northampton], with the appurtenances, were (for the considerations in the said indenture of release mentioned) conveyed by the said [Z. Y.] and [D. Y.], unto and to the use of the said [*ancestor*], his heirs and assigns for ever.

Recital of lease and release, whereby Moor Court was conveyed to the ancestor of the parties in fee.

AND WHEREAS, by indentures of lease and release, bearing date respectively on or about the and days of , the release being made, or expressed to be made, between [T. T.], therein described, and Mary his wife, of the first part, [P. T.], therein described, of the second part, and the said [*ancestor*], of the third part; and by a fine *sur conuzance du droit come ceo, &c.* duly levied in pursuance of a covenant in the said indenture of release now in recital for that purpose contained; certain pieces or parcels of land, hereditaments and premises, known by the name of Pentland Marsh, situate and being in the parish of , in the said county of Northampton, with the appurtenances, were (for the considerations in the said indenture of release now in recital mentioned,) conveyed,

Lease and release, and fine whereby Pentland Marsh was conveyed to ancestor in fee.

(*a*) The shares of [A.] and [B.] will be conveyed in like manner.

OF FREEHOLDS BY TENANTS IN COMMON.

and assured by the said [T. T.] and Mary his wife, and [P. T], unto and to the use of the said [*ancestor*], his heirs and assigns for ever. AND WHEREAS, by indentures of lease and release, bearing date respectively on or about the and days of , and made, or expressed to be made, between, &c. &c. and a common recovery duly suffered in Term, in the year in which the said [L. S.] was demandant, the said [L.S.] tenant, and the said [*ancestor*] vouchee, who vouched over: *And* by a declaration of the uses of that recovery, contained in the said last mentioned indenture of release, the messuages or tenements, farms, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, and their appurtenances, were discharged of and from all estates tail of the said [*ancestor*] therein, and all remainders and reversions expectant or depending thereupon, and assured and limited to the use of the said [*ancestor*], his heirs and assigns for ever. AND WHEREAS, the said [*ancestor*], in such manner as the law requires for rendering valid devises of freehold estates, duly signed and published his last will and testament in writing, bearing date on or about the day of , and thereby, after directing the payment of all his just debts, and funeral and testamentary expenses, gave and devised all his real estates (meaning thereby the said hereditaments and premises, called Moor Court, and Pentland Marsh, and the messuages or tenements, farms, lands, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, and their appurtenances,) unto his dear wife Ann, for and during the term of her life, and from and after her decease, unto his three sons, the said [A.], [B.], and [C.], their heirs and assigns for ever, in equal shares, as tenants in common: *And* the said [*ancestor*] appointed the said Ann his wife, and [L. T.], [J. H.], and [M. N.] in the said will described, executors of his said will. AND WHEREAS the said [*ancestor*] departed this life, on or about the day of , without having altered or revoked his said will: *And* on or about the day of , the same will was duly proved by the said executrix and executors thereof, in the Court of . AND WHEREAS the said

Lease and release and recovery, whereby the premises hereby conveyed were discharged from an estate tail, and limited to ancestor in fee.

Will of ancestor, whereby he devises the whole of the premises to Ann B. his wife for life, and afterwards to A., B., and C. in fee, as tenants in common.

Appointment of executors.

Death of ancestor without revoking his will,

and probate thereof.

Death of Ann B.

OF FREEHOLDS BY TENANTS IN COMMON.

Ann B. departed this life, on or about the day of . AND WHEREAS the said [A.], [B.], and [C.], have agreed to make a partition and division of all the said messuages or tenements, lands, farms, hereditaments, and premises, so devised to them, as hereinbefore is mentioned; *And* it hath been agreed that the said messuage or tenement, hereditaments, and premises, called Moor Court, with the appurtenances, should be conveyed to, and be accepted by, the said [A.], as and for and in lieu of his undivided third part or share, of and in all the said messuages or tenements, lands, farms, hereditaments, and premises, so devised to the said [A.], [B.], and [C.], as hereinbefore is mentioned: *And* that the said pieces or parcels of land, hereditaments, and premises, known by the name of Pentland Marsh, with their appurtenances, should be conveyed to, and be accepted by, the said [B.], as and for and in lieu of his undivided third part or share of and in all the said messuages or tenements, lands, farms, hereditaments, and premises, so devised to the said [A.], [B.], and [C.], as hereinbefore is mentioned; *And* that the said messuages or tenements, farms, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, with their appurtenances, should be conveyed to, and be accepted by, the said [C.], as and for and in lieu of his undivided third part or share, of and in all the said messuages or tenements, lands, farms, hereditaments, and premises, so devised to the said [A.], [B.], and [C.], as hereinbefore is mentioned. AND WHEREAS in pursuance and part performance of the said agreement, by indentures of lease and release, the lease bearing date the day next before the release, and the release bearing even date with these presents, and made or expressed to be made, between the same persons as are parties to these presents, the said messuage or tenement, hereditaments, and premises, called Moor Court, with their appurtenances, have been conveyed by the said [A.], [B.], and [C.], unto the said [*releasee to uses*] and his heirs, *To the use* of the said [A.], his heirs and assigns for ever. AND WHEREAS in pursuance and further performance of the said agreement, by other indentures of lease and release, the lease bearing date the day next

Agreement for partition;

and that Moor Court shall be conveyed to A.;

that Pentland Marsh shall be conveyed to B.;

and that the premises hereby conveyed should be conveyed to C.

Indentures of lease and release of even date, whereby A.'s share is conveyed to him in fee.

Indentures of lease and release of even date, whereby B.'s share is

OF FREEHOLDS BY TENANTS IN COMMON.

before the release, and the release bearing even date with these presents, and made or expressed to be made, between the same persons as are parties to these presents, the said pieces or parcels of land, hereditaments, and premises, known by the name of Pentland Marsh, with the appurtenances, have been conveyed by the said [A.], [B.], and [C.], unto the said [*releasee to uses*] and his heirs, *To the use* of the said [B.], his heirs and assigns for ever: AND WHEREAS the said [C.] is desirous that the said messuages or tenements, farms, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, and which were allotted to him upon such agreement for partition as aforesaid, and their appurtenances, should be conveyed to the uses hereinafter declared concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement for partition, and in consideration of the premises, and of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*releasee to uses*], to each of them the said [A.], [B.], and [C.], paid, at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby respectively acknowledged), *They* the said [A.], [B.], and [C.], according to their respectivee states, shares, and interests, and so far as they can or may at law or in equity, *Have*, and every of them *Hath*, granted, bargained, sold, aliened, released, and confirmed; *And* by these presents *Do*, and every of them *Doth*, grant, bargain, sell, alien, release, and confirm, unto the said [*releasee to uses*], in his actual, &c. (*reference to lease for a year*), and his heirs, ALL THAT messuage or tenement, &c. (*describe the premises agreed to be conveyed to* [C.],) *Together* with, &c. (*general words*); *And* the reversion, &c.; *And* all the estate, &c.: TO HAVE AND TO HOLD the said messuages or tenements, farms, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*releasee to uses*] and his heirs, *To the use* of the said [C.] and his assigns, during his life, without impeachment of waste, &c. [*usual uses bar dower.* See ante, p. 23.] (*Covenants for title by* [*A.*], [*B.*], *and* [C.], *as to their*

conveyed to him in fee.

Desire of C. to have the premises allotted to him conveyed to uses after mentioned.

Testatum.

Nominal consideration.

A. B. and C. convey to releasee.

Habendum,

unto releasee to uses to bar dower.

respective shares, with the releasee to uses, as ante, 24-27.) IN WITNESS, &c. (*a*).

Stamps on partitions.

(*a*) The necessary stamps on partition may here be adverted to. They are settled by the 55th Geo. III. c. 184, sched. part 1, and are as follows:

Any deed whereby any lands or other hereditaments, in England or Scotland, shall be conveyed, or any copyhold shall be covenanted to be surrendered, in order to effect a partition or division thereof among coparceners, co-tenants, or tenants in common, if a sum of money under 300*l.* shall be paid, or agreed to be paid, for equality of partition, the ordinary duty of - 1*l.* 15*s.*

And if any sum or sums of money, amounting to 300*l.* or upwards, shall be paid for equality, the same *ad valorem* duty as for a conveyance on the sale of lands, for a sum of money equal to the amount of the sum or sums so paid, or agreed to be paid.

And when any such deed of partition, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further duty of—

If the deed be liable, in the first instance, to a duty of 1*l.* 15*s.* - - - - - - 1*l.* 5*s.*

Or if liable to a higher duty in the first instance - - 1*l.*

And any duplicate of any such deed of partition shall be charged with the same duty or duties.

And in case there shall be more than one deed for completing the title to the estate or interest conveyed by either party, the principal deed only shall be charged under this head of partition; and any subordinate or collateral deed shall be charged with the duty to which it may be liable, under any other description, in this schedule.

Where a partition is effected by several deeds, and the shares being unequal, a sum for equality of partition is given to one of the parties, a doubt occurs in practice, whether an *ad valorem* duty would be merely payable on the conveyance of the smaller share, or whether it would also be payable on the deeds conveying any other share or shares, where nothing should be given by way of equality. It would appear, from the words of the act above stated, that the legislature did not contemplate a partition by several deeds, and consequently had not provided for the payment of the *ad valorem* duty on *one* of the deeds. It

BARGAIN AND SALE FOR A YEAR.

BARGAIN AND SALE (*a*) *for a Year, of the Premises appointed and released by the* NEXT PRECEDENT.

Parties.

First witnessing part, whereby trustees demise to B.

THIS INDENTURE, made the day of , BETWEEN [*trustees*] of, &c. of the one part, and [B.] of, &c. of the other part, WITNESSETH, that in consideration of five shillings of lawful money of Great Britain and Ireland, paid by the said [B.] to the said [*trustees*], at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), *They* the said [*trustees*] *Have*, and each of them *Hath*, bargained and sold, *And* by these presents *Do*, and each of them *Doth*, bargain and sell unto the said [B.], his executors, administrators, and assigns, ALL THAT undivided moiety, or equal half part or share (the whole into two equal half parts being divided), of [A.], of &c. of and in ALL THAT, &c. (*the Burton Grange premises, as in the next precedent*), *And* of and in all houses, &c. (*general words*), *And* of and in the reversion, &c. (*b*). TO HAVE AND TO HOLD the said undivided moiety or equal half part or share of the said [A.], hereby bargained and sold or intended so to be, of and in the said messuages or tenements, lands, hereditaments, and premises, hereinbefore described, and every part and parcel thereof, with their appurtenances, unto the

the undivided moiety of A. in Burton Grange.

Habendum to B. for one year,

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is suggested, however, that in such a case it would be sufficient to pay the duty on the deed conveying the smaller share. It may be advisable, however, to avoid this doubt, when money is to be paid by way of equality; to effect the partition by a *single deed*, and to deposit it in the hands of a mutual friend, who may covenant for its production to all the parties; but duplicates or counterparts of the deed should not be made, as they are liable to the same duties as the original deed.

(*a*) As some little difficulty might be found in drawing the lease for a year, referred to in the next precedent, the proper form is here introduced.

"All the estate."

(*b*) The clause of "all the estate, &c." is never correctly inserted in a lease for a year.

said [B.], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for the term of one whole year thence next ensuing, and fully to be complete and ended. YIELDING AND PAYING, therefore, the rent of one peppercorn, on the last day of the said term, if the same rent should be lawfully demanded; *To* the intent and purpose, that by virtue of these presents, and by force of the statute made for transferring uses into possession, the said [B.] may be in the actual possession of the said undivided moiety or equal half part or share of the said [A.] hereby bargained and sold, or intended so to be, of and in the said messuages or tenements, lands, hereditaments, and premises, hereinbefore described and called or known by the name of Burton Grange, with the appurtenances, and be thereby enabled to accept and take a grant and release of the reversion and inheritance of the same undivided moiety or equal half part or share to him the said [B.], his heirs and assigns for ever. (*c*)

BARGAIN AND SALE FOR A YEAR.

to the intent that he may receive a release of the reversion.

AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of five shillings of like lawful money, paid by the said [*trustees*] to the said [B.], at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) *He* the said [B.], *Hath* bargained and sold, *And* by these presents, *Doth* bargain and sell unto the said [*trustees*], their executors, administrators and assigns, ALL THAT undivided moiety or equal half part or share (the whole into two equal half parts being divided) of the said [B.], of and in ALL THAT, &c. (*the Cedar Hill premises, as in the next precedent*), *And* of and in all houses, &c. (*general words*). *And* of and in the reversion, &c. TO HAVE AND TO HOLD the said undivided moiety or equal half part or share of the said [B.], hereby bargained and sold or intended so to be, of and in the said pieces or parcels of land, hereditaments, and premises, lastly hereinbefore described, and every part and parcel thereof, with their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, from the day next before the day of the date of these presents, for the term of one whole year thence

Second witnessing part, whereby A. demises his moiety in Cedar Hill to trustees.

Habendum to trustees for one year, to the intent that they may receive a release of the reversion.

(*c*) And see 3 Byth. 167.

BARGAIN AND SALE FOR A YEAR.

next ensuing, and fully to be complete and ended. YIELDING AND PAYING therefore the rent of one peppercorn on the last day of the said term, if the same rent should be lawfully demanded; *To* the intent and purpose, that by virtue of these presents, and by force of the statute made for transferring uses into possession, the said [*trustees*] may be in the actual possession of the said undivided moiety or equal half part or share of the said [B.], hereby bargained and sold or intended so to be, of and in the said pieces or parcels of land, hereditaments, and premises, lastly hereinbefore described, and called or known by the name of Cedar Hill, with the appurtenances, and be thereby enabled to accept and take a grant and release of the reversion and inheritance of the same undivided moiety or equal half part or share to them the said [*trustees*], to such uses, upon such trusts, and for such ends, intents, and purposes, as are limited, expressed, and declared, by a certain indenture of release and settlement, bearing date on or about the day of , and made or expressed to be made, between [A.] of, &c. of the first part; Elizabeth his wife, (by her maiden name, of spinster,) of the second part; the said [*trustees*] of the third part; and [T. L.] and [P. O.], therein also described, of the fourth part. IN WITNESS, &c.

OF FREEHOLDS BY TENANTS IN COMMON.

PARTITION *of* FREEHOLDS *by* TENANTS IN COMMON, *where the Tenancy has been created by* DEVISE, *and where one of the Tenants has* MARRIED, *and settled his Share to Uses, with a* POWER TO TRUSTEES *to effect a Partition; a* REVOCATION *of the Uses of the Settlement, as to the* MOIETY *of the Premises allotted to the other* TENANT IN COMMON, *and* APPOINTMENT *and* RELEASE *to such Tenant in Common in* FEE. RELEASE *by the other Tenant in Common of his* MOIETY *in the Premises allotted to the other Parties.*

Parties.

THIS INDENTURE, made, &c. BETWEEN [T. T.], of &c. and [Y. Y.], of &c. [*trustees*] of the first part; [A.] of &c. and Elizabeth his wife, of the second part; and [B.] of &c. of the third part; WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , the release being made or expressed to be made between [Z. Z.], of &c. of the one part; and [*testator*] of the other part; the messuages or tenements, lands, hereditaments and premises, situate in the city of and called or known by the name of Burton Grange, and hereinafter firstly described, with their appurtenances, were, (for the considerations in the said indenture of release mentioned), conveyed, by the said [Z. Z.], to and to the use of the said [*testator*], his heirs and assigns for ever. AND WHEREAS, by indentures of lease, appointment and release, bearing date respectively on or about the and days of , and made or expressed to be made, between [T. L.] (therein described) and [ ] his wife, of the first part; [R. L.] (therein described) of the second part; and the said [*testator*] of the third part; the pieces or parcels of land, hereditaments and premises, situate in the parish of in the county of called and known by the name of Cedar Hill, and hereinafter secondly described, with their appurtenances, were (for the consi-

Recital of lease and release, whereby Burton Grange was conveyed to testator in fee.

Indentures of lease and appointment, and release, whereby Cedar Hill was conveyed to testator in fee.

OF FREEHOLDS BY TENANTS IN COMMON.

derations in the said indenture of appointment and release mentioned) appointed and released, by the said [T. L.] and Mary his wife, and confirmed by the said [R. L.] to and to the use of the said [*testator*], his heirs and assigns for ever. AND WHEREAS the said [*testator*], in such manner as the law requires for rendering valid devises of freehold estates, duly signed and published his last will and testament in writing, bearing date on or about the and days of , and thereby (amongst other things) gave and devised the said messuages or tenements, lands, hereditaments and premises, called or known by the name of Burton Grange, to his sister Mary T. and her assigns, for and during the term of her life; and from and after her decease, he gave and devised the same to the said [A.] and [B.] and their heirs for ever, as tenants in common: and he also gave and devised the said pieces or parcels of land, hereditaments and premises, called or known by the name of the Cedar Hill, to his sister Ann T. and her assigns, for and during the term of her life; and from and after her decease, he gave and devised the same to the said [A.] and [B.], and their heirs for ever, as tenants in common. *And* the said [*testator*] appointed [O. O.] and [P. P.] executors of his said will. AND WHEREAS the said testator departed this life on or about the day of , without having altered or revoked his said will. *And* on or about the day of , the same will was duly proved by the said [O. O.] and [P. P.] in court of . AND WHEREAS the said Mary T. departed this life, on or about the day of ; AND WHEREAS the said Ann T. departed this life, on or about the day of ; AND WHEREAS, by indentures of lease and release, bearing date respectively on or about the and days of , the release being made between the said [A.] of the first part; the said Elizabeth (therein described) of the second part; the said [*trustees*] of the third part; and [T. L.] and [P. O.] (therein respectively described) of the fourth part, (being the settlement made previously to, and in contemplation of, the marriage then intended, and since duly solemnized, between the said [A.] and the said Elizabeth), the undivided moiety or equal half part or

Will of testator, devising Burton Grange to his sister Mary for life;

remainder to A. and B., as tenants in common; and Cedar Hill to his sister Ann for her life; remainder to A. and B., as tenants in common.

Death of testator, and probate of his will.

Death of Mary.

Death of Ann.

Lease and release made on the marriage of A., whereby a moiety of the premises was settled

share of the said [A.], of and in all the said messuages or tenements, pieces or parcels of lands, hereditaments, and premises, so devised to the said [A.] and [B.] as hereinbefore is mentioned, with their appurtenances, was (for the considerations in the said indenture of release now in recital mentioned,) conveyed by the said [A.] to the uses, trusts, intents and purposes, and with, under, and subject to the powers, provisoes, declarations and agreements, in the same indenture of release declared concerning the same, and hereinafter in part mentioned; (that is to say) *To the use* of the said [A.], and his heirs, until the said then intended marriage should be solemnized, and after the solemnization thereof, *To the use* of the said [A.] and his assigns, during his life, with a limitation *To the use* of the said [*trustees*] and their heirs, during the life of the said [A.], *In trust* for him, the said [A.], and his assigns, and by the usual ways and means, to preserve the contingent remainders thereinafter limited, with remainder, *to the use* and intent that the said Elizabeth his intended wife, might receive out of the same moiety, or equal half part, during her life, a yearly rent or sum of £ , with the usual powers of distress and entry, and perception of rents and profits, for recovering the same yearly rent or sum, when in arrear, *And* subject and without prejudice to the said yearly rent or sum of £ , therein and hereinbefore mentioned, and the powers herein given for recovering the same, *To the use* of the said [T. L.] and [P. O.] their executors, administrators and assigns, for a term of ninety-nine years; and for better securing the payment of the said yearly rent or sum of £ as the same should become due; and after the expiration or sooner determination of the said term of ninety-nine years, and in the mean time subject thereto, and to the trusts thereof, *To the use* of the said [*trustees*], their executors, administrators and assigns, for the term of one thousand years, upon the several trusts in the said indenture of release declared, for raising portions for the daughters and younger sons of the said [A.], by the said Elizabeth; *And* after the expiration or sooner determination of the said term of one thousand years, and in the mean time subject thereto, and to the trusts thereof, *To the use* of the first

OF FREEHOLDS BY TENANTS IN COMMON.

to the use of A. till the marriage, then to the use of A. for life.

remainder to the use of trustees to preserve remainders;

remainder

to the use that his wife shall receive annuity, with usual powers and term for securing it;

remainder to the use of trustees for 1000 years, to raise portions;

to A.'s first son in tail;

OF FREEHOLDS BY TENANTS IN COMMON.

and that in the release was contained a power to effect a partition of the hereditaments devised;

son of the body of the said [A.], by the said Elizabeth in tail male, with divers remainder over. *And* in the said indenture of release was contained a power enabling the said [*trustees*], and the survivor of them, and the executors or administrators of such survivor, at any time or times thereafter, (at the request and by the direction of the said [A.] and Elizabeth, to be testified by some writing or writings, under their respective hands and seals) to join and concur with the said [B.], his heirs and assigns, or any person or persons for the time being seised of, or entitled to, the other moiety or undivided half part or share of the hereditaments hereinbefore mentioned, of which an undivided moiety, or half part or share was thereby conveyed, in making a partition or partitions thereof, or any part thereof. *And* that for the purpose of effecting such partition or partitions as aforesaid, *it was*, by the said indenture of release now in recital, *declared*, that it should be lawful for the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, (at such request, by such direction, and so testified as aforesaid) by any deed or deeds, instrument or instruments in writing, to be by them or him sealed and delivered, in the presence of, and attested by, two or more credible witnesses, absolutely to revoke, determine, and make void, all and every or any of the uses, trusts, powers and provisoes, hereinbefore limited, expressed, and declared, of and concerning the hereditaments and premises which should be so agreed to be divided, or any part thereof; and by the same, or any other deed or deeds, instrument or instruments in writing, to limit, declare, direct and appoint, any use or uses, estate or estates, trust or trusts, of the said hereditaments and premises, the uses and trusts of which should be so revoked, which it should be thought necessary or expedient to limit, declare, direct or appoint, in order to effectuate any such partition or partitions, as aforesaid. *And also*, that upon any or every such partition, as aforesaid, it should be lawful for the said [*trustees*], and the survivor of them, and the executors or administrators of such survivor, to receive or take any sum or sums of money, by way of equality of partition. *And also*, that upon payment of any money for equality of partition,

or any part thereof, it should be lawful for the said [*trustees*], and the survivor of them, and the executors or administrators of such survivor, to sign and give receipts for the money so to be paid for equality of partition, as aforesaid; *And* that such receipts should be good and sufficient discharges to the person or persons paying the same respectively, for the money for which the same should be given, or for so much thereof as in such receipt or receipts should be acknowledged to be received; *And* that the person or persons paying the same respectively, and taking such receipt or receipts for the same respectively, his, her, or their heirs, executors, or assigns, should not afterwards be answerable for any loss, misapplication, or nonapplication of the said monies, or be in anywise obliged to see to the application thereof, or of any part thereof respectively. *And* it is thereby also agreed and declared, that when any money shall be received for equality of partition, under the powers hereinbefore contained, they the said [*trustees*] should, with all convenient speed, pay and apply the money to be paid for equality of partition, in and towards the satisfaction and discharge of the principal sums of money, (if any) which should then, under and by virtue of the said indenture now in recital, have been charged upon or affecting the hereditaments and premises thereby conveyed; and lay out and invest the surplus (if any) of such money in the purchase of other hereditaments in fee simple in possession, to be situate in that part of Great Britain called England, or in the principality of Wales, of a clear and indefeasible estate of inheritance, or of a leasehold or copyhold tenure, convenient to be held therewith, or with the hereditaments thereinbefore settled, or so to be received on such partition as aforesaid; yet so that, during the joint lives of the said [A.] and Elizabeth his wife, such purchase or purchases respectively be made, with the consent of both of them, testified by some writing or writings under both their hands; and so that after the decease of such one of them as should first depart this life, the same should be made with the consent of the survivor of them, testified by some writing under his or her hand; and after his or her decease, with the consent in writing of the person or persons who would, under or by

OF FREEHOLDS BY TENANTS IN COMMON.

virtue of the limitations thereinbefore contained, be for the time being in the actual possession of, or entitled to, the rents and profits of the lands and hereditaments so to be purchased, in case the same were actually purchased and settled, if any such person or persons be of full age; but if such person or persons respectively shall be under age, then at the discretion and of the proper authority of the said [*trustees*], or the survivor of them, his executors, administrators, or assigns; *And* moreover that the said [*trustees*], and the survivor of them, his executors, administrators, or assigns, should settle and assure, or cause to be settled or assured, as well the hereditaments so to be purchased, as the hereditaments so to be received by way of partition, as hereinbefore is mentioned, to such and the same uses, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, conditions, and agreements, as are in and by the said indenture now in recital, limited, expressed, and contained, of and concerning such of the hereditaments hereinbefore mentioned, as should be so given in partition, or as near thereto as the nature and quality of the lands so to be purchased, and the deaths of parties and other intervening accidents would then admit.

Agreement for partition;

AND WHEREAS the said [*trustees*], at the request and by the direction of the said [A.] and Elizabeth his wife, have lately agreed, with the said [B.] that a partition should be effected of all the messuages or tenements, pieces or parcels of land, hereditaments, and premises, which were so devised to them the said [A.] and [B.], as tenants in common, as hereinbefore is mentioned; *And* it was thereupon agreed that the said messuages or tenements, lands, hereditaments, and premises, called or known by the name of Burton Grange, and hereinafter described, should exclusively belong to the said [B.], in lieu and satisfaction of the said undivided moiety or equal half part or share of the said [B.], of and in all the said messuages or tenements, pieces or parcels of land, hereditaments, and premises, so devised to the said [A.] and [B.], as tenants in common, as hereinbefore is mentioned: *And* it hath also been agreed, that the said pieces or parcels of land, hereditaments, and premises, called or known by the name of Cedar Hill, and

that Burton Grange should belong to B.;

and that Cedar Hill should belong to A.;

hereinafter described, should exclusively belong to the said [A.] and the persons entitled under the said indenture of release and settlement, of the day of , in lieu and satisfaction of the said undivided moiety or half part or share of the said [A.], of and in all the said messuages or tenements, pieces or parcels of land, hereditaments, and premises, so devised to the said [A.] and [B.], as tenants in common, as hereinbefore is mentioned; *And* it was also agreed that the said hereditaments and premises should be valued by proper persons, in order that the respective value of the allotments should be ascertained. And whereas the said [*trustees*] and [B.], have appointed and authorised [J. S.] of, &c. and [T. D.] of, &c. to survey, measure, and value the said messuages or tenements, pieces or parcels of land, hereditaments, and premises, and every part thereof, and to fix and determine the difference in value between the said messuages or tenements, lands, hereditaments, and premises, called or known by the name of Burton Grange, and the pieces or parcels of lands, hereditaments, and premises, called or known by the name of Cedar Hill, with their respective appurtenances. And whereas in pursuance and by virtue of such authority as aforesaid, they the said [J. S.] and [T. D.], after having attentively reviewed and surveyed the said messuages or tenements, lands, hereditaments, and premises, called or known by the name of Burton Grange, and the pieces or parcels of land, hereditaments, and premises, called or known by the name of Cedar Hill, with their respective appurtenances; and after duly examining the respective value and condition thereof, and the situation, nature, and quality of the same hereditaments and premises, have fixed and determined the value of the said messuages or tenements, hereditaments, and premises, called or known by the name of Burton Grange, with the appurtenances, at the sum of pounds; and the value of the said pieces or parcels of land, hereditaments, and premises, called or known by the name of Cedar Hill, with the appurtenances, at the sum of pounds, as they the said [*trustees*] and [B.] do hereby respectively admit and acknowledge: And it has been agreed between the said [*trustees*] and [B.], that the sum of pounds, (being

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that the premises should be valued;

that trustees and B. have authorised persons to survey the premises;

and their determination as to the value.

Agreement between trustees and B.

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that the sum of pounds should be paid by B. to trustees for equality of partition.

Payment of equalitymoney.

and that it has been agreed to carry the partition into effect.

Testatum.

Trustees, by direction of A. and his wife, and with consent of B., revoke the uses limited by the settlement, so far as they relate to the moiety thereby released of Burton Grange.

the excess in the value of the said messuages or tenements, lands, hereditaments, and premises, called or known by the name of Burton Grange, over and above the said pieces or parcels of land, hereditaments, and premises, called or known by the name of Cedar Hill, with the appurtenances,) should be paid by the said [B.] to the said [*trustees*] by way of equality of partition, as hereinafter is mentioned: AND WHEREAS the said [B.] hath this day accordingly well and truly paid to the said [*trustees*], the said sum of £ of lawful money of Great Britain and Ireland, as they the said [*trustees*] do hereby admit and acknowledge, testify, and declare: AND WHEREAS it hath been agreed by the parties hereto to carry the said partition into effect by the conveyances and appointment hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and for the carrying into complete effect the said partition, and in consideration of the premises, *They* the said [*trustees*], at the request and by the direction of the said [A.] and Elizabeth his wife, (testified by this deed or writing under their respective hands and seals,) and with the privity and consent of the said [B.], (testified by his being a party to, and sealing and delivering these presents), and pursuant to, and in execution of, the power or authority of them the said [*trustees*] given, limited, or reserved, in and by the said recited indenture of release, of the day of , and by force and virtue thereof, and of every other power and authority to them belonging, in them vested, or in anywise them enabling in this behalf, *Do* by this present deed or instrument in writing, by them the said [*trustees*] sealed and delivered, in the presence of, and attested by two credible witnesses, absolutely revoke, determine, and make void, all and every the uses, trusts, powers, and provisoes, in and by the said indenture of release, of the day of , limited, expressed, and declared, so far as they relate to or respect *All that* the undivided moiety or equal half part or share of the said [A.] thereby released, of and in *All those* the said messuages or tenements, lands, hereditaments, and premises, called or known by the name of Burton Grange, with the ap-

purtenances. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of pounds, so paid by the said [B.] to the said [*trustees*] as hereinbefore is mentioned, and pursuant to and in exercise and execution of the said power and authority so given to them the said [*trustees*], in and by the said indenture of release, of the day of , as aforesaid, and by virtue thereof, and of every other power in them vested, *They* the said [*trustees*], at the like request and by the like direction of the said [A.] and Elizabeth his wife, (testified as aforesaid), and with the like privity and consent of the said [B.], (testified as aforesaid,) *Do* by this present deed or instrument in writing, by them the said [*trustees*] sealed and delivered, and intended to be attested as aforesaid, limit, declare, direct, and appoint, that the undivided moiety or equal half part or share of the said [A.], of and in ALL THAT messuage, &c. (*describe the Burton Grange premises,*) *And* of and in the reversion, &c. *And* all the estate, &c. shall henceforth remain, continue, and be, *To the use* of the said [B.], his heirs and assigns for ever. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and for the carrying into complete effect the said partition; *And also* in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [B.] in hand paid to the said [A.] and Elizabeth his wife and the said [*trustees*], at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) *They* the said [*trustees*], at the like request and by the like direction of the said [A.] and Elizabeth his wife, testified as aforesaid, and according to their respective estates, rights, and interests, *Have,* and each of them *Hath,* bargained, sold, and released, *And* by these presents *Do,* and each of them *Doth,* bargain, sell, and release; *And* the said [A.], so far as he can or may, at law or in equity, *Have,* and each of them *Hath,* granted, bargained, sold, aliened, released, and confirmed; *And* by these presents *Do,* and each of them *Doth,* grant, bargain, sell, alien, release, and

Further testatum, by which the trustees limit the undivided moiety in Burton Grange to B. in fee.

Further testatum. Release of the moiety of A. in Burton Grange by trustees, and by A. to B. in fee.

OF FREEHOLDS BY TENANTS IN COMMON.

confirm, unto the said [B.], in his actual, &c. (*reference to lease for a year*,) and his heirs, *All that* the said undivided moiety or equal half part or share of the said [A.], of and in the said messuages or tenements, lands, hereditaments, and premises, hereinbefore particularly described, and called or known by the name of Burton Grange, with their and every of their rights, members, and appurtenances, *And* of and in the reversion, &c. *And* all the estate, &c.

Habendum to B. in fee.

TO HAVE AND TO HOLD the said undivided moiety or equal half part or share of the said [A.], hereby granted and released, or intended so to be, of and in the said messuages or tenements, lands, hereditaments, and premises, with their and every of their appurtenances, unto the said [B.], and his heirs and assigns, *To the use* of the said [B.], his heirs and assigns for ever.

Last testatum. whereby B. conveys his moiety in Cedar Hill to the trustees to the uses of the settlement.

AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the appointment and conveyance to the said [B.], hereinbefore contained, *He* the said [B.], with the privity and consent of the said [A.], (testified by his being a party to, and sealing and delivering these presents,) *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*trustees*], in their actual, &c. (*reference to lease for a year*), and their heirs, ALL THAT the undivided moiety or equal half part or share of him the said [B.], of and in ALL THAT (*describe the Cedar Hill premises*), *And* of and in the reversion, &c. *And* all the estate, &c.

Habendum to trustees to the uses hereinafter declared.

TO HAVE AND TO HOLD the said undivided moiety or equal half part or share of the said [B.] hereby granted and released, or intended so to be, of and in the said pieces or parcels of land, hereditaments, and premises hereinbefore lastly described, with their and every of their appurtenances, unto the said [*trustees*] and their heirs, *To the uses*, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, which in and by the hereinbefore recited indenture of release and settlement of the day of , are expressed and declared of and concerning the other moiety, or half part or share of and in the same hereditaments and premises. (*Covenant against*

incumbrances by the trustees, as post, and 1 Byth. 434.) (*Covenants for title by* [*A.*] *as to one moiety of Burton Grange, with* [*B.*], as ante, 24. 25-27. *And by* [*B.*] *as to one moiety of Cedar Hill, with the trustees,* as ante, 24. 25-27.) IN WITNESS, &c.

OF FREEHOLDS BY TENANTS IN COMMON.

PARTITION *of* COPYHOLDS (*a*) *by Three* COPARCENERS, *or* TENANTS IN COMMON, *where the whole of the Hereditaments are covenanted to be surrendered by* ONE DEED.

OF COPYHOLDS BY COPARCENERS OR TENANTS IN COMMON.

THIS INDENTURE, made, &c. BETWEEN [A.] of, &c. of the first part; [B.] of, &c. of the second part; and [C.] Parties.

(*a*) It seems quite clear that the statutes for enforcing a partition, 31 Hen. VIII. c. 1; 32 Hen. VIII. c. 32; 8 and 9 Wm. III. c. 31; and 7 Anne, c. 18, do not extend to copyholds. Kitch. 167. Co. Cop. s. 54. Trac. 125. Gilb. Ten. 185. *Rowden* v. *Malter,* Cro. Cha. 44. *Burrell* v. *Dod,* 3 Bos. and Pul. 378. 2 Watk. Cop. [194] 2 Scriv. Cop. 104. *Glover* v. *Cope,* 1 Show. 287. And that a bill does not lie in equity for the partition of copyholds. *Scott* v. *Fawcett,* Dick. 299. *Oakley* v. *Smith,* Amb. 368. 1 Eden, 261. S. C. 1 Mad. Cha. 248. And as the writ for partition at common law only extended to freeholds, copyholds not being immediately impleadable in the common law courts, 4 Co. 21 b. *Scott* v. *Kettlewell,* 19 Ves. 335, there appears to be no way of compelling a partition of copyholds by joint tenants, tenants in common, or coparceners. The only mode, therefore, for effecting such a partition, is by the agreement of the parties, and the surrendering the tenements to the uses agreed upon. There seems, however, some little difficulty as to the necessity of a license from the lord of the manor, to effect a partition, or whether the parties can of themselves effect it. According to a short note of the case of *Fuller* v. *Terry,* in Hale MS. Co. Litt. 59 a (1), a license must be obtained;

Statutes enforcing partition do not apply to copyholds;

nor does a bill in equity lie for their partition;

nor a writ at common law;

and there is no mode of compelling a partition.

OF COPYHOLDS BY COPARCENERS OR TENANTS IN COMMON.

of, &c. of the third part; WHEREAS the said [A.], [B.], and [C.] are seised or well entitled, to them and their heirs (*b*), as coparceners, according to the custom of the manor of , of the copyhold messuages or tenements, hereditaments and premises, hereinafter described, and intended to be hereby covenanted to be surrendered, with the appurtenances. (*c*) AND WHEREAS the said [A.] [B.] and [C.] have agreed to make a partition of the said messuages or tenements, hereditaments and premises, hereinafter described, and intended to be hereby covenanted to be surrendered; AND that, for the purpose of effectuating the said partition, the said messuages or tenements, hereditaments and premises, should be covenanted to be surrendered to the uses, and in the manner hereinafter mentioned. AND WHEREAS the license and consent of the lord of the said manor of to the said partition has been duly obtained. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and for effectuating the said intended partition, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by each of them the said [A.], [B.], and [C.], to the others and other of them paid,

Recital of seisin as coparceners of copyhold hereditaments.

Agreement for partition:

and to surrender the premises for that purpose.

And that license has been obtained. Testatum.

Nominal consideration.

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but this case is also stated in 1 Rol. Abr. 509, pl. 1. 2, where no mention is made of this point. In one report of *Oakly* v. *Smith*, (1 Eden, 265) the consent of the lord is alluded to by the Master of the Rolls. But in Calthrop, Read. 76, 2d edit. it is said that two joint copyholders may make partition without license, and the same law is laid down in *Wase* v. *Pretty*, Winch, 3. So that it seems clear that joint-tenants may effect a partition by release to each other, without the lord's consent: but it seems open to doubt, whether they could surrender to each other, or whether coparceners or tenants in common could surrender without the license of the lord; and to prevent all doubt, the consent should, if possible, be in every case obtained.

Joint tenants may release to each other, without assent of the lord.

And see also, as to this, Co. Litt. 59 b. *Porter* v. *Porter*, Cro. Jac. 100.

TENANTS IN COMMON.

(*b*) Or, if so,

"as tenants in common,"

History of the title.

(*c*) If the history of the title is to be recited, or there has been an agreement for partition, &c. see *ante*, p. 28-35. 44-9. 57.

at or immediately before the sealing and delivering of these presents, (the receipt whereof is hereby respectively acknowledged,) each and every of them, the said [A.], [B.], and [C.], so far as relates to his equal third part or share of and in the said copyhold messuages or tenements, hereditaments and premises, hereby covenanted to be surrendered, with their appurtenances, and so far as relates to the acts and deeds of himself, and of all persons claiming or to claim by, from, through, under, or in trust for him, them, or any of them, in respect of the same third part or share, but not further or otherwise (*d*), *Doth* hereby severally, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the others and other of them, their and every of their heirs and assigns, that they the said [A.], [B.], and [C.], or their heirs, and all and every other proper and necessary parties, shall and will, at the equal costs and charges of the said [A.], [B.], and [C.], or their heirs, at the next or some subsequent general or special court baron, or customary court, to be holden for the manor of aforesaid, or out of court, duly surrender, or cause to be surrendered, into the hands of the lord or lady, lords or ladies, for the time being, of the said manor, and according to the custom of the said manor, *All*, &c. (*parcels*) (*e*) with all and singular the rights, members, and appurtenances to the same premises belonging or appertaining; And the reversion, &c. And all the estate, &c. *To the several uses*, and in the manner hereinafter mentioned. *As* to the said messuage or tenement, situate and being at, &c. and the said four closes now in the possession of [W. W.] of &c., *To the use* of such person or persons, for such estates or interests, upon and for such trusts, intents and purposes, and in such manner, as the said [A.] shall, by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of, and

OF COPYHOLDS BY COPARCENERS OR TENANTS IN COMMON.

Covenant by the coparceners to surrender the hereditaments to uses.

As to one portion, to the use of such persons as A. shall by deed or will appoint;

(*d*) If the parties are tenants in common, the commencement of the covenant will be the same.

TENANTS IN COMMON.

(*e*) General words are never correctly inserted in surrenders of copyholds.

General words.

OF COPYHOLDS BY COPARCENERS OR TENANTS IN COMMON.

attested by, two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, from time to time, direct, limit, or appoint. *And* in default of such direction, limitation, or appointment, and so far as any such direction, limitation, or appointment, if incomplete, shall not extend, *To the use* of the said [A.], his heirs and assigns for ever. AND as to the said messuage or dwelling house, situate at, &c. &c. *To the use* of the said [B.], his heirs and assigns for ever. AND as to the capital mansion house, situate at, &c. and the two fields thereto adjoining, &c. &c. *To the use* of the said [C.], his heirs and assigns for ever. AND each and every of them, the said [A.], [B.], and [C.], so far as relates to the acts and deeds of himself, and of all persons claiming, or to claim, by, from, through or under, or in trust for him, them, or any of them, in respect of one equal third part or share of and in the said messuages or tenements, hereditaments, and premises, hereby covenanted to be surrendered, with the appurtenances, but not further or otherwise, *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the others and other of them, their, and every of their heirs and assigns, that for and notwithstanding any act, deed, matter or thing whatsoever, by them the said [A.], [B.], and [C.] made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, they the said [A.], [B.], and [C.] are, at the time of the sealing and delivering of these presents, lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said messuages or tenements, hereditaments, and premises, hereby covenanted to be surrendered, and every part thereof, with their and every of their appurtenances, for a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee simple, according to the custom of the manor of , without any manner of condition, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter or thing whatsoever, to alter, charge, defeat, incumber, revoke, or make void the same. *And that* for and notwithstanding any act, deed, matter or thing, as aforesaid, they the said [A.], [B.], and [C.] now have in

and in default to A. in fee.

As to another portion to B. in fee;

and as to another portion to C. in fee.

Covenants for title, by coparceners as to one third.

that they are seised in fee.

Good right to surrender.

themselves good right, full power, and lawful and absolute authority to surrender the said messuages or tenements, hereditaments, and premises, hereby covenanted to be surrendered, with the appurtenances, to the uses and in manner aforesaid, and according to the true intent and meaning of these presents. *And that* the said messuages or tenements, hereditaments and premises, hereby covenanted to be surrendered, with their appurtenances, shall and may, from time to time, and at all times hereafter, continue and be, *To the uses*, upon and for the trusts, intents, and purposes, hereinbefore declared of and concerning the same, and be peaceably and quietly held and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, be received and taken accordingly. *And that* free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said [A.], [B.], and [C.], their heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless and indemnified, of, from, and against all and all manner of former and other surrenders, gifts, grants, bargains, sales, jointures, freebench, and all rights and titles of freebench, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, reentry, cause and causes of forfeiture and re-entry, debts of record, debts due to the King's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had and made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered, by the said [A.], [B.], and [C.], or their or either of their heirs, or by any other person or persons lawfully or equitably claiming, or to claim, by, from, or under, or in trust for him, them, or any of them, or by their acts or means, except only the customary rents, fines, duties and services, payable to and to be performed in respect of the same hereditaments and premises, to the lords and ladies of the said manor of for the time being. *And further that* they the said [A.], [B], and [C.], and their heirs, and all and every other person or persons having or claiming, or who shall or may hereafter

OF COPYHOLDS BY COPARCENERS OR TENANTS IN COMMON.

For quiet enjoyment.

free from incumbrances.

For further assurance.

OF COPYHOLDS BY COPARCENERS OR TENANTS IN COMMON.

have or claim, any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuages or tenements, hereditaments and premises, hereby covenanted to be surrendered, or any of them, or any or any part thereof, by, from, or under, or in trust for them the said [A.], [B.], and [C.], or their heirs, shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges of the person making the request, make, do, surrender and execute, or cause or procure to be made, done, surrendered and executed, all such further and other lawful and reasonable acts, deeds, things, surrenders, conveyances and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely surrendering and assuring of the said messuages or tenements, hereditaments and premises, hereby covenanted to be surrendered, and every part thereof, with their appurtenances, *To the uses* hereinbefore mentioned, in manner aforesaid, and according to the true intent and meaning of these presents, as by the person making such request, or his counsel in the law, shall be reasonably devised, advised, and required, so as no such further assurance or assurances contain or imply any further or other covenant or warranty, than against the person or persons who shall be required to make or execute the same, and his or their heirs, executors, and administrators' acts and deeds, and so as the party or parties who shall be required to make such further assurance or assurances, be not compelled nor compellable, for the making thereof, to go or travel from his, her, or their usual place, or respective places of abode. IN WITNESS, &c.

PARTITION *of* COPYHOLDS *by* JOINT TENANTS (*a*), *by* RELEASE: *the whole being by one Deed: the Parcels being described by way of Schedules: with short Recitals of the History of the Title.*

OF COPYHOLDS BY JOINT TENANTS.

THIS INDENTURE, made the day of , BETWEEN [A.] of, &c. of the one part, and [B.] of, &c. of the other part. WHEREAS [*testator*] being at the time of making his will, hereinafter recited, and thenceforth to the time of his decease, seised to him and his heirs, according to the custom of the manor of , of the copyhold messuages or tenements, lands, hereditaments, and premises, mentioned and described in the two several schedules hereunder written or hereunto annexed, and intended to be hereby released, with their appurtenances, and having duly surrendered the same to the use of his said will, made and published his last will and testament in writing, bearing date on or about the day of , and thereby gave and devised the said messuages or tenements, lands, hereditaments, and premises, mentioned and described in the two several schedules hereunder written or hereunto annexed, with the appurtenances, unto and to the use of his two sons the said [A.] and [B.], their heirs and assigns for ever, as joint tenants. (*Death of testator without altering his will, and probate thereof,* as ante, 50.) AND WHEREAS, at a special court baron or customary court, holden for the said manor

Parties.

Recital of seisin of testator, and that by his will duly surrendered he devised the premises.

Presentment of the death and will of testator,

(*a*) Joint tenants of copyholds cannot surrender to each other; they must release; and no further admission is necessary, 1 Watk. Cop. [277] and *ante*, 15; although such surrender might perhaps operate as a severance, and the surrenderee be in under a new title, to be perfected by admission. It would seem also, that coparceners may release to each other, &c. *ante*, 15; but it is clear that tenants in common can only surrender to each other, 16.

OF COPYHOLDS BY JOINT TENANTS.

of , held on the day of , the homage presented the death of the said [*testator*], and also his said recited will, which was thereupon enrolled at the same court; *And* at the same court, the said [A.] and [B.] were admitted tenants to the said messuages or tenements, lands, hereditaments, and premises, so devised to them as hereinbefore is mentioned, *To hold* to them the said [A.] and [B.], their heirs and assigns for ever, by copy of court roll, at the will of the lord, according to the custom of the said manor of . AND WHEREAS a partition of the said messuages or tenements, lands, hereditaments, and premises, so devised to them the said [A.] and [B.], as hereinbefore is mentioned, with their appurtenances, hath been agreed upon by the said [A.] and [B.]: *And* that the messuages or tenements, lands, hereditaments, and premises, mentioned and described in the first schedule hereunder written or hereunto annexed, with their appurtenances, should be taken and received by the said [A.] in lieu of his equal moiety or undivided half part or share of and in the said messuages or tenements, lands, hereditaments, and premises, so devised to the said [A.] and [B.], as hereinbefore is mentioned, with their appurtenances: *And* that the said messuages or tenements, lands, hereditaments, and premises, mentioned and described in the second schedule hereunder written or hereunto annexed, with their appurtenances, should be taken and received by the said [B.] in lieu of his equal moiety or undivided half part or share of and in the said messuages or tenements, lands, hereditaments, and premises, so devised to the said [A.] and [B.], as hereinbefore is mentioned, with their appurtenances. AND WHEREAS, in order to effect such partition as hereinbefore is mentioned, it hath been agreed that the said [A.] should release all his right, title, interest, and claim whatsoever, in, to, or upon the said messuages or tenements, lands, hereditaments, and premises, mentioned and described in the second schedule hereunder written or hereunto annexed, with their appurtenances, in the manner hereinafter mentioned: *And* that the said [B.] should release all his right, title, interest, and claim whatsoever, in, to, or upon the said messuages or tenements, lands, heredita-

and admittance of A. and B.

Agreement for partition;

and that A. should take premises in first schedule;

and that B. should take premises in second schedule;

and that mutual releases of the several shares should be executed.

ments, and premises, mentioned and described in the first schedule hereunder written or hereunto annexed, with their appurtenances, in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of ten shillings by the said [B.] to the said [A.] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) *He* the said [A.], *Hath* remised, released, and for ever quitted claim, *And* by these presents *Doth* remise, release, and for ever quit claim, unto the said [B.], his heirs and assigns, ALL THOSE the said messuages or tenements, lands, hereditaments, and premises, mentioned and described in the second schedule hereunder written or hereunto annexed, with their and every of their appurtenances; *Together* with (*general words*), *And* the reversion, &c. *And* all the estate, &c. *To* the end and intent, that he the said [B.], his heirs and assigns, and every person or persons claiming or deriving title from, through, under, or in trust for him or them, or any or either of them, may have and enjoy the said messuages or tenements, lands, hereditaments, and premises, mentioned and described in the second schedule hereunder written or hereunto annexed, and hereby firstly released, or intended so to be, with their appurtenances, free and discharged from any claim or claims, challenge, demand, estate, right, title, or interest, in, to, out of, upon, or concerning the same messuages or tenements, lands, hereditaments, and premises, or any part thereof, by the said [A.], his heirs, executors, or administrators, or any person or persons now or hereafter claiming or deriving title from, through, under, or in trust for him or them, or any of them: *And* the said [A.] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [B.], his heirs and assigns (*b*),

OF COPYHOLDS BY JOINT TENANTS.

Testatum, whereby for nominal consideration, A. releases to B. all his right in premises in first schedule.

For quiet enjoyment,

(*b*) The two first covenants in the usual chain of covenants for title, —that A. is seised in fee, and that he has good right to convey,—seem in this case unnecessary, if not improper. They are, therefore, omitted.

Covenants for title.

OF COPYHOLDS BY JOINT TENANTS.

that it shall and may be lawful for the said [B.], his heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to hold, occupy, possess, and enjoy, the said messuages or tenements, lands, hereditaments, and premises, mentioned and described in the second schedule hereunder written or hereunto annexed, and hereby firstly released, or intended so to be, with their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of or by him the said [A.], or his heirs, or of, from, or by any other person or persons whomsoever, lawfully or equitably claiming, or to claim, by, from, or under, or in trust for him, them, or any of them; *And* that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [A.], his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other surrenders, gifts, grants, bargains, sales, jointures, freebench, and all rights and titles of freebench, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the King's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had and made, executed, occasioned and suffered, or hereafter to be had, made, executed, occasioned and suffered, by the said [A.] or his heirs, or by any other person or persons lawfully or equitably claiming, or to claim, by, from, or under, or in trust for him, them, or any of them, or by his or their acts, deeds, means, default, or procurement, except only the customary rents, fines, duties, and services, payable and to be performed in respect of the same hereditaments and premises, to the lord or lady, or lords or ladies, of the said manor of , for the time being. *And further*, that he the said [A.] and his heirs, and all and every other per-

free from incumbrances.

And for further assurance.

OF COPYHOLDS BY JOINT TENANTS.

son or persons, having or claiming, or who shall or may hereafter have or claim, any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuages or tenements, lands, hereditaments, and premises, mentioned and described in the second schedule hereunder written or hereunto annexed, and hereby firstly released, with their appurtenances, or any of them, or any part thereof, by, from, under, or in trust for him the said [A.] or his heirs, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges of the said [B.], his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, surrendered, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, releases, conveyances, and assurances in the law, for the further, better, more perfectly releasing, conveying, and assuring of the said messuages or tenements, lands, hereditaments, and premises, mentioned and described in the second schedule hereunder written or hereunto annexed, and hereby firstly released, or intended so to be, with their appurtenances, unto and to the use of the said [B.], his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [B.], his heirs or assigns, or his or their counsel in the law, shall be reasonable devised, advised, and required, so as no such further assurance or assurances contain or imply any further or other covenant or warranty than against the person or persons who shall be required to make or execute the same, and his or their heirs, executors, and administrators' acts and deeds, and so as the party or parties who shall be required to make such further assurance or assurances, be not compelled or compellable, for the making thereof, to go or travel from his, her, or their usual place or respective places of abode. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration (*nominal consideration from [A.] to [B.] as above*), *He* the said [B.], HATH, &c. (*similar release from [B.] to*

Second witnessing part, whereby B. releases to A. all his right in premises in first schedule.

OF COPYHOLDS BY JOINT TENANTS.

[*A.*] *of premises in first schedule, as in* p. 75, l. 10, *and similar covenants from* [*B.*] *to* [*A.*], as ante, p. 75, *the reference to the premises being* " the messuages, &c. mentioned and described in the first schedule hereunder written or hereunto annexed, and hereby secondly released, with their appurtenances." IN WITNESS, &c. (*c*).

Stamp.

(*c*) As by this deed the lands are neither conveyed nor covenanted to be surrendered, it does not seem liable to a partition stamp. See *ante*, p. 53; but would be liable to a 1*l.* 15*s.* stamp, as a release.

OF LEASEHOLDS BY TENANTS IN COMMON.

PARTITION *of* LEASEHOLDS (*a*) *by* TENANTS IN COMMON, *the whole of the Premises being assigned to a Trustee.*

Parties.

THIS INDENTURE, made, &c.; BETWEEN [A.] of, &c. of the first part; [B.] of, &c. of the second part; and [*trustee*] of, &c. of the third part. WHEREAS by an indenture of lease, bearing date on or about the day of , and made or expressed to be made, be-

Recital of lease, whereby the premises were demised to lessee.

Whatever may be divided at common law may also be divided by a suit in equity.

(*a*) It may not be useless here to consider what may be the subject of a partition. And first, it may be laid down, that whatever may be divided at common law may be also the subject of a partition by a suit in equity; and further, many kinds of property may be partitioned under the direction of a court of equity, which could not be divided at common law. *Agar* v. *Fairfax*, 17 Ves. 547. *Bodicoate* v. *Steers*, 1 Dick. 69, which is another advantage in favour of the equitable remedy; and in a partition in equity, it is not necessary that every part of the estate, if there be more than one, should be divided: it will be sufficient if each partner have an equal share of the whole. See *Cla-*

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tween [*lessor*] of the one part, and [*lessee*] of the other part, the said [*lessor*] did, for the considerations therein mentioned, demise and lease unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT messuage or dwelling-house, situate in Street, in the town of , in the county of , and numbered , *And* all that piece or parcel of land adjoining thereto, called the close, and premises. *To hold* the same messuage or dwelling-house, piece or parcel of ground, with the appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, from the day of the date of the said indenture now in recital, for and during the term of years, at or under the yearly rent of pounds, payable as in the same indenture is mentioned, and under and subject to the covenants, conditions, and agreements, in the same indenture contained, on the part of the said [*lessee*], his executors, administrators, or assigns, to be observed and performed. AND WHEREAS the said [*lessee*] departed this life on or about the day of , having previously duly made and published his last will and testament, in writing, bearing date on or about the day of , and thereby (amongst other things) gave and bequeathed the said messuage or dwelling-house, piece or parcel of land, and

Death of lessee, having previously made his will, bequeathing the premises to his two sons A. and B., as tenants in common;

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rendon v. *Hornby*, 1 P. Wms. 446. And any inequality in the portions is now generally made up by a sum given for equality of partition.

Castles.

All real and personal property whatsoever, capable of being divided, is subject to partition; and what is accounted not divisible, may be shortly mentioned. Thus, a castle built for the defence of the realm was held not to be divisible, on the principle of public policy; but in the case of coparceners, was allotted to the elder, to hold for the purpose for which it was built. Co. Litt. 165, a. But castles built for private habitation might always have been divided. Co. Litt. 166, a. And it may be observed, that this distinction hardly prevails at the present time, as few castles, built for public purposes, are now in the hands of private proprietors.

Incorporeal hereditaments. Advowsons.

There are some incorporeal hereditaments which, it was formerly held, could not be divided; as, for example, an advowson. And in this case, there was a distinction when the advowson was the property of joint tenants or tenants in common, and when it was the property

OF LEASEHOLDS BY TENANTS IN COMMON.

premises, unto his two sons, the said [A.] and [B.], for their absolute use and benefit, as tenants in common: *And* the said testator appointed [Y. Y.] executor of his said will, who duly proved the same in the proper ecclesiastical court, on or about the day of .

and probate of will.

Agreement for partition;

AND WHEREAS the said [A.] and [B.] have agreed to make a partition of the said messuage or dwelling-house, piece or parcel of land, and premises, hereinafter described, and intended to be hereby assigned, with their appurtenances, in the manner hereinafter mentioned; (that is to say;) It hath been agreed that, *All that* the said messuage or dwelling-house, hereinbefore described, with the appurtenances, should belong to, and be accepted by, the said [A.], as and for his half part or share of and in all the said premises so bequeathed as aforesaid; *And that All that* piece or parcel of land, hereinbefore described, called close, with their appurtenances, should belong to, and be accepted by, the said [B.], as and for his half part or share of and in all the said premises so bequeathed as aforesaid; *And* that all the said premises should be assigned to the said [*trustee*], in manner hereinafter mentioned.

that one portion shall be conveyed to A.

and the other portion to B.;

AND WHEREAS the said messuage or dwelling-house, piece or parcel of land and premises, with the ap-

that the premises have been respectively valued;

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of coparceners; for if there be two joint tenants, and the one presents to the church, and his clerk is admitted and instituted, this, in respect of the privity, shall not put the other out of possession. Co. Litt. 186 b. 243 a. 249 a. 2 Just. 366. But if one joint tenant or tenant in common present, or if they present severally, the ordinary may either admit, or refuse to admit, such presentee, unless all the joint tenants, or tenants in common, join in presentation. Co. Litt. 186 b. *Wilson* v. *Kirkshaw*, 1 Ves. 413. 7 B. P. C. 296. Roll. Ab. 372. And after the six months have expired, he may present as for a lapse. Co. Litt. 186 a. 5 Hen. VII. 8 a. Burn. Eccles. Law, tit. *Advowson*. But if the owners of the advowson be coparceners, and they cannot agree to present, the eldest shall present, and a *quare impedit* will lie against the other coparceners on disturbance, and the issue and the assignees of the elder will have the same privilege. Co. Litt. 166 a. 188 b. And so shall her husband, by the curtesy; *ib.* 2 Just. 365. Plowd. 333. *Buller* v. *Bishop of Exeter*, 1 Ves. 340. But see Harg. not. Co. Litt. 186 b. (2). And the same principle has been recognised in a more modern decision, where it was held, that if there

purtenances, having been respectively valued by proper persons appointed for the purpose, and the said messuage or dwelling-house, and premises, with the appurtenances, have been found to be of the value of pounds; *And* the said piece or parcel of land and premises, with the appurtenances, have been found to be of the value of pounds: *And* it has been agreed that the difference in value between the said messuage or dwelling-house, and premises, with the appurtenances, and the said piece or parcel of land and premises, with the appurtenances, being the sum of pounds, should be paid by the said [A.] to the said [B.], by way of equality of partition. AND WHEREAS it hath been agreed that each of them the said [A.] and [B.], should pay an equal moiety of the said yearly rent of pounds, so reserved as aforesaid, in respect of the premises so respectively allotted to him, as hereinbefore is mentioned: *And* that each of them the said [A.] and [B.], should enter into the covenants hereinafter on his part contained. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and for effectuating the said intended partition; *And* in consideration of the sum of pounds of lawful

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and that the difference in value should be paid by A. to B. for equality.

That the rent should be equally paid.

Testatum.

in consideration of the sum for equality, and nominal consideration.

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be two coparceners of an advowson, and they, on a vacancy, cannot agree to present, the eldest, or her assigns, may present to the first turn, and the second to the next, and so on. *Barker* v. *Bishop of London*, Willes, 659. 1 H. B. 412. S. C. And see Bro. Ab. tit. *Quare Impedit*, pl. 118. But a partition of an advowson may now be enforced in a court of equity, where a conveyance will be directed for equalizing the right of presentation. *Matthews* v. *Bishop of Bath and Wells*, 2 Dick. 612. *Bodicoate* v. *Steers*, 1 Dick. 69. *Clarendon* v. *Hornby*, *infra*. And see also *Bishop of Salisbury* v. *Phillips*, Carth. 505. 1 Salk. 43. 1 Ld. Raym. 535. S. C. Where a partition of an advowson is made to present by turns, each party shall be seised of a separate estate. And all the coparceners need not join in their remedy, on a disturbance of their respective rights. 7 Ann, c. 18.

A partition might have been effected of a villein; one coparcener having his services for a week, a month, &c., and the other, another week or month, &c. Co. Litt. 164 b. Villein.

A rent charge may be divided, and the tenant of the land is subject to several distresses. Co. Litt. 164 b. But reasonable estovers, as Rent-charge. Estovers.

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money of Great Britain and Ireland, by the said [A.] to the said [B.], in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of pounds, he the said [B.], doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge, the said [A.], his heirs, executors, and administrators;) *And* in consideration of the sum of ten shillings of like lawful money, by the said [*trustee*] to the said [A.] and [B.] paid at the same time, (the receipt whereof is hereby acknowledged,) *They* the said [A.] and [B.], *Have*, and each of them *Hath*, bargained, sold, assigned, transferred, and set over, *And* by these presents *Do*, and each of them *Doth*, bargain, sell, assign, transfer, and set over, unto the said [*trustee*], his executors and administrators, *All those* the said messuage or dwelling-house, piece or parcel of land, and premises, hereinbefore described, with their and every of their appurtenances; *Together* with, &c. (*general words*), *And* all the estate, &c. TO HAVE AND TO HOLD the said messuage or dwelling-house and garden, pieces and parcels of land, and all and singular other the premises, hereby assigned, or intended so to be, and every part thereof,

A and B. assign to trustee

parcels.

Habendum to trustee,

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house-bote, hay-bote, &c. appendant to the freehold, are entire, and shall not be divided. And a corody uncertain shall not be divided, although it is otherwise with a corody certain. Co. Litt. 164 b. Nor can a piscary uncertain, or a common *sans nombre*, be divided, as this would be a charge to the tenant of the soil. Co. Litt. 149 a. Nor, it would seem, can a turbary uncertain be divided. *Earl of Huntingdon and Mountjoy's case*, Co. Litt. 164 a. Godb. 17. 1 And. 307, Moor. 174. Co. Litt. 165 a, Harg. not. (1). And the only way of effecting an indirect partition of these interests is, either for one partner to take them, and the other or others to receive a recompense by some other part of the hereditaments, or by a sum of money by way of equality of partition; or for one partner to take for one year, and the other for the next. See Co. Litt. 165 a. 6 Rep. 1. A mill may also be divided, F. N. B. 62. F. Vin. Ab. Partition, B. *Clarendon* v. *Hornby*, 1 P. Wms. 447.

Tithes also may clearly be the subject of a partition. *Baxter* v. *Knollys*, 1 Ves. sen. 496. 1 Gwill. 826. A reversion may also be divided. F. N. B. 62. D. Co. Litt. 169 a. 16 Vin. Ab. 217. Fea.

Corody.

Piscary.

Common.

Turbary.

Indirect partition thereof.

Mill.

Tithes.

Reversion.

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with their appurtenances, unto the said [*trustee*], his executors and administrators, for and during all the residue and remainder which is now to come and unexpired of the term of years created therein, by the said hereinbefore recited indenture of lease, at under and subject to the said yearly rent of pounds, and the covenants and agreements, which are payable to, and to be performed in respect of the same messuage or dwelling-house, piece or parcel of land, and premises, under or by virtue of the said indenture of lease: *But nevertheless* upon and for the trusts, intents, and purposes, and in the manner hereinafter mentioned, (that is to say,) *As* to the said messuage or dwelling-house and premises, hereinbefore described, and hereby assigned, or intended so to be, with the appurtenances, *Upon trust* that he the said [*trustee*], his executors or administrators, do and shall, forthwith, at the expense of the said [A.], assign and make over the same messuage or dwelling-house and premises, unto the said [A.], his executors, administrators, or assigns, for and during the residue and remainder of the said term of years, created therein as aforesaid, at, under, and subject to the yearly rent or sum of pounds, being an equal moiety of the said rent or sum of

Upon trust to assign one portion to A.

Post. 243. And the interest of tenants by *elegit*, stat. merchant, and of the staple, may be partitioned. Co. Litt. 200 a. An equity of redemption may be divided. *Swan* v. *Swan*, 8 Pri. 519.

Elegit. Statute merchant, statute of the staple, equity of redemption.

A manor may be divided, and if there are several coparceners, on its partition each will have part of the demesne and part of the services, because each of them is *in* by the act of the law; each of them has a manor, not in name only, but in reality also. *Sir Moyle Finch's case*, 6 Co. 54 a. Co. Cop. s. 21. Tr. 52. 53. 2 Roll. Abr. 122. G. But it is otherwise of joint tenants, for they are *in* by purchase, and were not compellable by the common law to make partition. *Marshe* v. *Smith*, 1 Leon. 27. Cro. Eliz. 39. S. C. It has, indeed, been questioned whether coparceners, on a partition, shall have several manors; as it has been held that a manor is an entire thing, and not severable. *Queen* v. *Duchess of Bolton*, 6 Mod. 151. But the better opinion seems to be, that in the case of coparceners there would, on partition, be several manors, although not in the case of joint tenants. See all the cases referred to in 1 Watk. Cop. [17], [18], and in the note of Mr. Coventry, 17, n. (1), whose labours have rendered a very

Manor.

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pounds, so reserved as aforesaid, and the covenants and agreements, which are respectively payable and to be performed, in respect of the said last mentioned premises, as aforesaid; *And* as to the said piece or parcel of land and premises, hereinbefore described, and hereby assigned, or intended so to be, with the appurtenances; *Upon trust*, that he the said [*trustee*], his executors and administrators, do and shall forthwith, at the expense of the said [B.], assign and make over the same piece or parcel of land and premises, unto the said [B.], his executors, administrators, or assigns, for and during the residue and remainder of the said term of years, created therein as aforesaid, at, under, and subject to the rent or sum of pounds, being an equal moiety of the said rent or sum of pounds, so reserved as aforesaid, and the covenants and agreements, which are respectively payable and to be performed, in respect of the said last mentioned premises, as aforesaid: *And* the said [A.], so far as relates to one equal moiety or half part or share of and in the said messuage or dwelling-house, piece or parcel of land, and premises, hereby assigned, or intended so to be, with their appurtenances, and so far as relates to the acts and deeds of himself, and of all persons claiming or to claim, by, from, through,

and the other portion to B.

Covenants for title, each for his separate share, and his own acts and deeds.

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great service to Mr. Watkins's work. But it is clear, that if, on a partition by coparceners, the entire demesnes of the manor are allotted to one, and the services to another, the manor is then *suspended*; but if the demesnes again descend to her who has the services, or *vice versa*, the manor is again revived. Bro. Ab. Exting. pl. 13.

If there be two things to be divided, the inequality of the portions may be made up by money, &c. but if there be but one thing, if a partition be insisted on, it will be divided however inconvenient the consequences may be.

If there are several things to be divided, the rule in equity seems to be, that if a division can be effected, so that each party may have a part, the inequality of the portions may be made up in money, &c.; but if there is but one thing to be divided, then, if a partition is insisted on, it will be enforced, however inconvenient or absurd the consequences may be. Thus, where there was a house, and also lands of smaller value than the house, it was decreed that one of the parties should take the house, and the other the lands; and that a recompense should be made by the person taking the greater share, to the person taking the share least in value, that is to say, by the person taking the house to the person taking the lands. *Clarendon* v. *Hornby*, 1 P. Wms. 446. But it was laid down in the same case, that if there is but one house, it shal be divided into halves. Ib. 448. And this shall be done, although the

under, or in trust, for him, in respect of the same half part or share, but not further or otherwise; *And* the said [B.], so far as relates to one equal moiety or half part or share of and in the said messuage or dwelling-house, piece or parcel of land, and premises, hereby assigned, or intended so to be, with their appurtenances, and so far as relates to the acts and deeds of himself, and of all persons claiming or to claim, by, from, through, under, or in trust for him, in respect of the same half part or share, but not further or otherwise, *Doth* hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*trustee*], his executors, administrators, and assigns, in manner following, (that is to say); *That* for and notwithstanding any act, deed, matter, or thing, by them the said [A.] and [B.], made, done, committed, executed, or knowingly or willingly suffered to the contrary, the said hereinbefore recited indenture of lease is at the time of the sealing and delivery of these presents, a good and effectual lease and demise in the law, and not forfeited, surrendered,

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that the lease is good.

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benefit of the thing so divided shall be entirely destroyed to both parties. See *Warner* v. *Baynes*, Amb. 589, as a partition is a matter of right. *Cartright* v. *Pulteney*, 2 Atk. 380. *Norris* v. *Le Neve*, 3 Atk. 83. *Parker* v. *Gerard*, Amb. 236. *Manston* v. *Squire*, 8 Cha. Ca. 237. *Turner* v. *Morgan*, 8 Ves. 143. 11 Ves. 157, n. 17 Ves. 546, n. *Agar* v. *Fairfax*, 17 Ves. 548. Thus also, in a very late case, *Burley* v. *Moore and Lake*, a partition of a set of chambers having been decreed; the door and door way were allotted to Moore and Lake, with a right of way to Burley, to his allotted part of the chambers; but it was no part of the partition that Burley should have his *name on the door*. On an application for an injunction, to restrain the defendants from erasing the name of the plaintiff from the door, Sir J. Leach, V. C. refused to interfere, although the parties were all solicitors, and it was highly inconvenient to the plaintiff not to have the privilege of placing his name on the door. MS.

A commission will not issue of lands in Ireland.

A commission cannot issue out of the English Court of Chancery, to effect a partition of property situated in Ireland. *Watson* v. *Duke of Northumberland*, 11 Ves. 162. And see *Houlditch* v. *Lord Donegal*, 1 Beatt. I. Rep. 150.

If the title be doubtful, the parties will be left to their legal remedy.

And a court of equity will leave the parties to their legal remedy, if the title of the parties is doubtful or suspicious. *Baring* v. *Nash*, 1 V. and B. 356. *Scott* v. *Fawcett*, 1 Dick. 299.

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assigned, or become void or voidable, and that the rents, covenants, conditions, and agreements, therein respectively reserved and contained, have on the tenants or lessees part been duly paid, observed and performed, up to the day of the date of these presents; *And* that for and notwithstanding any act, deed, matter, or thing, as aforesaid, they the said [A.] and [B.] have now in themselves good right, full power, and lawful and absolute authority to assign and assure the said messuage or dwelling-house, piece or parcel of land, hereditaments, and premises, hereby assigned, or intended so to be, with the appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, for and during all the residue and remainder of the said term of years, in manner aforesaid, and according to the true intent and meaning of these presents; *And* that it shall be lawful to and for the said [*trustee*], his executors, administrators, and assigns, from time to time, and at all times hereafter, during the continuance of the said term of years, quietly to enter into, hold, occupy, possess, and enjoy the said messuage or dwelling-house, piece or parcel of land, and premises, hereby assigned, or intended so to be, with their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by them the said [A.] and [B.], or either of them, their or either of their executors or administrators, or any other person or persons lawfully or equitably claiming or to claim, by, from, under, or in trust for them, or either or any of them, save and except the rents, covenants, conditions and agreements, in and by the said hereinbefore recited indenture of lease reserved and contained, and which on the tenant or lessee's part are or ought to be paid, observed, and performed: *And that* free and clear, and freely and clearly, and absolutely, acquitted, exonerated, released, and for ever discharged, or otherwise by the said [A.], and [B.], their heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other gifts, grants, trusts, intails, wills, mort-

Good right to assign.

For quiet enjoyment.

Free from incumbrances.

OF LEASEHOLDS BY TENANTS IN COMMON.

gages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rent, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeitures and re-entry, debts of record, debts due to the King's majesty, and of, from, and against, all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, and made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, or suffered, by the said [A.] and [B.], or their executors and administrators, or by any other person or persons lawfully or equitably claiming or to claim, by, from, or under, or in trust, for them, or any of them, or by their or either of their acts, means, defaults, or procurements: *And further*, that they the said [A.] and [B.], and their executors and administrators, and all and every other person or persons, having or claiming, or who shall or may hereafter have or claim, any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuage, &c. hereby assigned, or intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for them the said [A.] and [B.], their executors and administrators, shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, at the proper costs and charges of the person making such request, his executors, administrators, and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, assignments, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely assigning and assuring of the said messuage, &c. hereby assigned, or intended so to be, and every part thereof, with their appurtenances, upon and for the trusts, intents, and purposes, hereinbefore mentioned, and according to the true intent and meaning of these presents, as by the person making such request, his heirs or assigns, or his or their counsel in the law, shall be reasonably devised, or advised, and required, so as no such further assurance or assurances, contain or imply any further or other covenant or warranty, than against

And for further assurance.

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the person or persons who shall be required to make or execute the same, and his or their heirs, executors, and administrators' acts and deeds; and so as the party or parties who shall be required to make such further assurance or assurances, be not compelled nor compellable for the making thereof, to go or travel from his, her, or their usual place or respective places of abode. AND THIS INDENTURE FURTHER WITNESSETH (*a*), that in pursuance and part performance of the said agreement, and in consideration of the covenant hereinafter contained on the part of the said [B.], *He* the said [A.], *Doth* hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [B.], his executors, administrators, and assigns, that *He* the said [A.], his executors, administrators, and assigns, shall and will, from time to time, and at all times hereafter, during the continuance of the said term of years, well and truly pay, or cause to be paid, unto such person or persons, as shall for the time being be entitled to receive the same, one equal moiety or half part of the said yearly rent of pounds, reserved by the said hereinbefore recited indenture, as aforesaid, at the times and in the manner in the same indenture mentioned, and according to the true intent and meaning thereof: *And* shall and will, during the continuance of the said term, perform, fulfil, and keep, all and singular the covenants and agreements, in the said hereinbefore recited indenture of lease contained, on the lessee's part to be kept, done, and performed, so far as the same respectively are or ought to be kept, done, or performed, on account or in respect of the said premises so allotted to the said [A.], as hereinbefore is mentioned: *And* shall and will, from time to time, and at all times hereafter, save, defend, and keep

Further testatum.

Covenant by A. to pay his moiety of the rent;

and perform covenants to be performed by him;

and will indemnify B. from the payment of

Two sets of leaseholds.

(*a*) When there are two sets of leasehold property, and one partner takes one part, and the other, the other part, each party should assign, by several deeds, to the other, his moiety in the premises, which he himself does not take. As the forms may be easily constructed by reference to those given above, it was thought not to be necessary to give them at length.

harmless and indemnified, the said [B.], his executors, administrators, and assigns, and his and their lands, tenements, goods, chattels, and effects, of and from the payment of the said rent, and the observance and performance of the said covenants and agreements, so far as the same respectively are hereby agreed to be paid, observed, and performed by the said [A.], his executors, administrators, and assigns, as aforesaid, and of and from all actions, suits, causes of action and suit, claims, and demands whatsoever, on account of the same, or in any wise relating thereto. AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the covenant hereinbefore contained on the part of the said [A.], *He* the said [B.], *Doth* hereby for himself, his heirs, executors, and administrators, covenant, &c. (*as before*, p. 88, l. 14, *down to* p. 89, l. 11, *transposing the names.*) IN WITNESS, &c.

OF LEASEHOLDS BY TENANTS IN COMMON.

the rent and the performance of the covenants.

Last testatum.

ASSIGNMENT (a) by TRUSTEE, of one Portion of the Premises assigned to him, by the preceding Deed.

ASSIGNMENT BY TRUSTEE.

THIS INDENTURE, made, &c. BETWEEN the within named [*trustee*] of the one part; and the within named [B.] of the other part; WITNESSETH, That in execution of the trusts in the within written indenture in this behalf declared, and (*nominal consideration from* [*A.*] *to* [*trustee*]) He, the said [*trustee*] *Hath* bargained, sold, assigned, and set over, and, &c. unto the said [A.], his executors, administrators and assigns, ALL THAT and those the said messuage, &c. in the said within written indenture described, and thereby assigned, with their appurtenances, *And* all the estate, right, title, interest, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of him the said [*trustee*], in, to, out of, or upon the same premises, and every part and parcel thereof,

Parties.

Testatum.

Parcels.

(a) This deed should be indorsed on the counterpart of the deed assigning the premises to the trustee, given into the possession of [A.]; and a similar deed to this, assigning the share of [B.] to him, in like manner, should be indorsed on the counterpart in his possession.

ASSIGNMENT BY TRUSTEE.

with their and every of their appurtenances, To HAVE AND TO HOLD the said messuages, &c. hereby assigned, or intended so to be, and every part thereof, with their appurtenances, unto the said [A.], his executors, administrators, and assigns, for his and their own use and benefit, for and during all the residue and remainder which is now to come and unexpired, of the within mentioned term of years, at, under, and subject to the rents, covenants, and agreements, which are payable and to be performed, in respect of the same messuage, &c. under or by virtue of the within recited indenture of lease of the day of . [(*b*) *And* the said [*trustee*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [A.], his heirs and assigns, that he the said [*trustee*] hath not, at any time heretofore, made, done, committed, executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby or by reason or means whereof, the said messuage, or dwelling-house, hereditaments and premises, hereby assigned, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be in anywise impeached, charged, affected or incumbered. IN WITNESS, &c.

Habendum to A. for residue of term.

Covenant by trustee that he has not incumbered.

COVENANT TO PRODUCE TITLE DEEDS.

COVENANT *to produce* TITLE DEEDS, *by one Joint Tenant, Coparcener, or Tenant in Common, to the other; Proviso, that if a similar Covenant shall be obtained, the present Covenant to be void; Covenant for the Preservation of Deeds (either by a separate Deed, or otherwise).*

THIS INDENTURE (*a*), made the day of BETWEEN [A.] of &c. of the one part, and [B.] of &c.

Parties.

Necessity of covenant.

(*b*) If the re-assignment is made immediately after the deed assigning the property to the trustees, this covenant may be safely omitted.

Covenant to produce.

(*a*) As a general rule, a covenant to produce deeds should always be taken by a separate deed. See Index to the Notes, *word* TITLE-DEEDS.

of the other part; WHEREAS, by indenture of lease and release, the lease bearing date the day next before the release, and the release bearing even date with these presents, and made, or expressed to be made, between the said [A.] of the first part, the said [B.] of the second part, and [*releasee to uses*] of the third part; and by a fine *sur conuzance de droit come ceo*, to be levied in term next, in pursuance of a covenant in the said indenture of release contained, a certain messuage or tenement called , and situate and being in the parish of , in the county of , and three acres of land thereto adjoining, and a certain piece or parcel of land called the meadow, containing, by estimation, nine acres, or thereabouts, in the said indenture of release more particularly described, with their appurtenances, are for the purpose of effectuating a partition thereof between the said [A.] and the said [B.], and for other the considerations therein mentioned, intended to be conveyed to the said [*releasee to uses*], and his heirs, to the uses following (that is to say); as to the said messuage or tenement, called , and the land thereto adjoining, with the appurtenances, to the use of the said [A.], his heirs and assigns for ever; and as to the said piece or parcel of land, called the meadow, with the appurtenances, to the use of the said [B.], his heirs and assigns for ever. AND WHEREAS the several deeds, muniments, and evidences of title, described in the schedule hereunder written, relate not only to the said messuage or tenement called , and the land thereto adjoining, with the appurtenances, but also to the said piece or parcel of land, called the meadow, with the appurtenances. AND WHEREAS it hath been agreed, that the said deeds, muniments, and evidences of title, shall be and remain in the custody of the said [A.], and that the said [A.] shall covenant with the said [B.] for the production and preservation thereof, in such manner as hereinafter is mentioned. NOW THIS IN-

COVENANT TO PRODUCE TITLE DEEDS.

Recital of lease and release, and covenant to levy a fine, whereby certain premises are intended to be conveyed to releasee, as to one portion, to the use of A., and as to the other, to the use of B.

That title deeds relate to both portions.

That title deeds should remain with A.

If, however, it is the desire of the parties to have it contained in the same deed as the partition, this commencement, and the first recital, will of course be omitted, and the witnessing part will be, "*And this Indenture lastly witnesseth.*"

COVENANT TO PRODUCE TITLE DEEDS.

DENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, HE the said [A.] *Doth* hereby, for himself, his heirs, executors and administrators, covenant, promise, and agree, with and to the said [B.], his heirs and assigns, that he the said [A.], his heirs and assigns, shall and will, from time to time, and at all times hereafter, unless prevented by fire or other inevitable accident, upon every reasonable request in writing, and at the expense of the said [B.], his heirs or assigns, produce and shew forth, in any part of the United Kingdom of Great Britain and Ireland, unto the said [B.], his heirs, executors, administrators, and assigns, or to his or their counsel, attorneys, or agents, at or upon any trial, hearing, commission, or examination, in any competent court or courts of judicature, or to any arbitrator or umpire lawfully appointed, or otherwise, as occasion shall require, to be by him or them then and there respectively perused, pleaded, and given in evidence, or otherwise reasonably employed, all, every, or any of the deeds, instruments, or writings, which are specified in the schedule thereof hereunder written, for the manifestation, defence, and support of the estate, title, and possession of the said [B.], his heirs or assigns, to the said piece or parcel of land (*b*), called meadow, conveyed, or intended to be conveyed, to the said [B.], his heirs or assigns, by the said hereinbefore recited indenture, as aforesaid, with the appurtenances. *And* at the like request, cost, and charges, make and deliver, or cause to be made and delivered, true and attested and other copies or copy, abstracts or abstract, of the same deeds, instruments, and writings respectively, or any of them, *And* permit and suffer, or cause and procure such copies or abstracts to be examined and compared with the original deeds, either by the said [B.], his heirs or assigns, or by such person or persons as he or they shall from time to time, for that purpose, direct. [(*c*) PROVIDED NEVERTHELESS, and it is

Covenant to produce the deeds.

Proviso, that if on a sale of the

(*b*) If the covenant is in the same deed, say,
" hereinbefore granted and released, or intended so to be."

Separate deed.

(*c*) This proviso is sometimes inserted, but a partitioner is not entitled to insist upon it. If all parties, therefore, do not agree to it, it should be omitted.

Proviso for avoiding the covenant.

hereby agreed and declared, between and by the parties hereto, that if the other hereditaments and premises, to which the said deeds, instruments, and writings respectively refer, shall hereafter be sold, or otherwise absolutely disposed of; and the said [A.] shall procure the purchaser or purchasers thereof to enter into a like covenant to that which is hereinbefore contained, with the said [B.], his heirs and assigns, for the production of the said deeds, instruments, and writings, to him and them; then, and in that case, the covenant and agreement hereinbefore contained for that purpose, shall from thenceforth cease and be void.] *And* he, the said [A.], doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [B.], his heirs and assigns, that until such sale as last aforesaid, he, the said [A.], his heirs, executors, administrators, and assigns, shall and will, in the mean time, use and take, and cause to be used and taken, all due and proper care to preserve and keep the same deeds, instruments, and writings, from being defaced, injured, cancelled, lost, or destroyed. IN WITNESS, &c.

COVENANT TO PRODUCE TITLE DEEDS.

premises, a similar covenant shall be entered into by the purchaser, this present covenant shall be void.

Covenant by A. for the production of the deeds.

ASSIGNMENT of a TERM to attend the INHERITANCE on a Partition; where the whole of the Premises are assigned to one Trustee, as to the several Allotments, In Trust for the respective Parties; with Variation for the circumstance of there being SEVERAL DEEDS, *and* SEVERAL TRUSTEES.

ASSIGNMENT OF TERM.

THIS INDENTURE, made the day of , BETWEEN [Z. Z.] of &c. [*trustee to assign term*] of the first part; [A.] of &c. of the second part; [B.] of &c. of the third part; and [Y. Y.] of &c. [*trustee to whom term is to be assigned*] of the fourth part; WHEREAS, by an indenture, bearing date on or about the day of , and made, or expressed to be made, between [D. D.], (therein described) of the one part, and [L. L.], (therein described) of the other part, the pieces or parcels of land, hereditaments, and premises, hereinafter described, and intended to be hereby assigned, with their appurtenances,

Parties.

Recital of indenture, creating the term;

ASSIGNMENT OF TERM.

were demised by the said [D. D.] unto the said [L. L.], his executors, administrators, and assigns, for the term of years from thence next ensuing, for certain purposes in the said indenture mentioned, and which have now long since been fully performed, or otherwise satisfied; AND WHEREAS, after divers mesne conveyances and assurances in the law, and ultimately by indentures of lease and appointment, and release, bearing date respectively on or about the and days of , the appointment and release being made, or expressed to be made, between [E.] of the first part, [F.] of the second part; and [O. O.] of the third part, the freehold and inheritance in fee simple in remainder or reversion, immediately expectant on the determination of the said term of years, of and in the said pieces or parcels of land, hereditaments, and premises, hereinafter described, and intended to be hereby assigned, and their appurtenances were, for the considerations in the said indenture of appointment and release mentioned, appointed and conveyed by the said [E.] and [F.], *To the use* of the said [O. O.], his heirs and assigns for ever. AND WHEREAS, by divers mesne assignments, assurances, and other acts in the law, and particularly by an indenture, bearing date on or about the day of , and made, or expressed to be made, between (therein described) of the first part, the said [E.] of the second part, the said [F.] of the third part, the said [O. O.] of the fourth part, and [Z. Z.] of the fifth part, the said pieces or parcels of land, hereditaments, and premises, hereinafter described, and their appurtenances, were (for the considerations in the said indenture now in recital mentioned) assigned by the said [ ] to the said [Z. Z.] for the then residue and remainder of the said term of years, created therein, as aforesaid, *In Trust* for the said [O. O.], his heirs and assigns, and to attend the inheritance. [*Then recite will of* [*O. O.*], *and devise of the premises, his death, and probate of his will, as ante, p.* 50. 58.] AND WHEREAS, in pursuance of an agreement for effecting a partition, by indentures of lease and release, the lease bearing date on or about the day before the day of the date of the release, and the release bearing even date with these presents, and being made, or expressed to be made, between the said [A.] of the first part, the said

that by divers mesne conveyances, and ultimately by indentures of lease and release and appointment, the fee was conveyed to the testator;

that by divers mesne assignments, and ultimately by an indenture of the day of , the premises were assigned to Z. Z. for the residue of the term.

Indentures of lease and release, whereby partition has been effected.

[B.] of the second part, and [*releasee*] of &c. of the third part, the pieces or parcels of land, hereinafter described and mentioned to be situate at and their appurtenances, were conveyed to the said [A.], his heirs and assigns, as and for his share of the said pieces or parcels of land, hereditaments, and premises, so devised to them the said [A.] and [B.], as hereinbefore is mentioned; and the pieces or parcels of land, hereinafter described, and mentioned to be situate at and their appurtenances, were conveyed to the said [B.] his heirs and assigns, as and for his share of the said pieces or parcels of land so devised to them the said [A.] and [B.] as hereinbefore is mentioned. AND WHEREAS it hath been agreed, that the said [Z. Z.] should assign the said pieces or parcels of land, hereditaments, and premises, with the appurtenances, unto the said [Y. Y.] for the residue and remainder of the said term of years, upon the trusts and in manner hereinafter mentioned, NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [Y. Y.] to the said [Z. Z.] paid, at or immediately before the sealing and delivering of these presents (the receipt whereof is hereby acknowledged), *He*, the said [Z. Z.], at the request and by the direction of the said [A.] (*a*) and [B.], (testified by their respectively being parties to, and sealing and delivering these presents) *Hath* bargained, sold, and assigned, *And* by these presents *Doth* bargain, sell, and assign, unto the said [Y. Y.], his executors, administrators, and assigns, ALL, &c. (*the parcels*); *Together* with, &c. *And all* the estate, &c. To HAVE AND TO HOLD the said pieces or parcels of land, hereditaments, and all and singular other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [Y. Y.], his executors, administrators, and assigns, for and during all the residue and remainder, which is now to come and unexpired of the said term of years, created therein by the said hereinbefore recited indenture of the day of , as

ASSIGNMENT OF TERM.

Agreement to assign.

Testatum.

Z. Z. assigns to Y. Y.

Habendum.

For residue of term.

(*a*) "The said [A.]" or "[B.]" according to the circumstances. Several deeds.

ASSIGNMENT OF TERM.

aforesaid (*b*), *As* to, for, and concerning *All that* piece or parcel of land situate and being, &c. *And all* that piece of meadow land situate at *And all* that piece or parcel of land situate at , and so conveyed to, and accepted by the said [A.], as hereinbefore is mentioned, *In Trust* for the said [A.], his heirs and assigns, and to assign and dispose of the same as he or they shall, from time to time, order or direct; *And* in the mean time, *In trust* to permit the same term to wait upon and attend the reversion, freehold, and inheritance of the said pieces or parcels, lands, hereditaments, and premises, hereinbefore lastly described, and hereby assigned, or intended so to be; and to protect the same from all mesne incumbrances, if any such there be; *And* as to, for, and concerning, all that piece or parcel of land situate at ; *And* all that piece or parcel of land situate at , and so conveyed to, and accepted by, the said [B.], as hereinbefore is mentioned, *In trust* for the said [B.], his heirs or assigns, and to assign and dispose of the same as he or they shall from time to time order or direct; *And* in the mean time, *In trust* to permit the same term to wait upon and attend the reversion, freehold, and inheritance of the said pieces or parcels of land, hereditaments and premises, hereinbefore lastly described, and hereby assigned, or intended so to be, with their appurtenances; and to protect the same from all mesne incumbrances, if any such there be. (*Covenant by* [*Z. Z.*] *against incumbrances, as ante*, p. 90.) IN WITNESS, &c.

As to one portion, In trust for A., his heirs and assigns, and to attend the inheritance.

and as to the other portion, in trust for B., his heirs and assigns, and to attend the inheritance.

Several deeds.

(*b*) If there be several deeds, and the term is assigned to several trustees, the only variation will be as follows; and all the deeds will be the same, except in the description of the several allotments:

"*In trust*, nevertheless, for the said [A.] *or* [B.], his heirs and assigns, and to assign and dispose of the same as he or they shall, from time to time, order or direct; *And* in the mean time, *In trust* to permit the same term, to wait upon and attend the reversion, freehold, and inheritance of the said pieces or parcels of land, hereditaments, and premises, hereby assigned, or intended so to be, with their appurtenances, and to protect the same from all mesne incumbrances, if any such there be." (*Covenant against incumbrances, by* [*Z. Z.*], *as ante, p.* 90.)

PARTNERSHIP.

Definition of partnership.

PARTNERSHIP may be defined to be "a voluntary association of two or more persons, for the purpose of carrying on together some lawful trade or occupation, upon an agreement that the gains and profits arising therefrom, shall be divided proportionably between them." It is essential that the association be *voluntary*, for no person can be compelled to enter into any trade or business without his free consent *(a)*: The mere possession of property by two or more individuals in common, will not of itself make the possessors of it partners *(b)*. It is also necessary that the object of the association be *lawful (c)*; but it is not essential that it should be a *trade*, for a partnership may exist between attornies, farmers, school-masters, or surgeons, as well as between merchants, bankers, or general traders *(d)*. It also seems that to constitute a partnership it is necessary that there should be a *joint* employment of labour, or capital; and that an agreement between two or more persons to share, in certain proportions, the profits of separate stock, or separate labour, will not amount to a partnership; as if two watermen agree to divide their fares, or two fishermen agree to share the profits of the fish that each may catch, or two insurance brokers agree to divide their commissions *(e)*. The last and most im-

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(*a*) *Hoare* v. *Dawes*, Douglas, 373.

(*b*) Gow on Partnership, p. 6. But there is some property of which the joint possession by several persons seems necessarily to involve a partnership, as it can only be productive in the way of trade, as an interest or share in coal, or other mines. See *Jeffreys* v. *Smith*, 1 Jac. & Walk. 302. Of the like nature seem also interests or shares in patent inventions, or newspaper concerns. A kind of partnership also subsists between part owners of a ship.

(*c*) *Biggs* v. *Lawrence*, 3 T. R. 454; and see *Bensley* v. *Bignold*, 5 B. & A. 341; *Aubert* v. *Maze*, 2 Bos. & Pul. 371.

(*d*) *Coope* v. *Eyre*, 1 H. Bl. 37.

(*e*) *Waugh* v. *Carver and others*, 2 H. Bl. 235; and *Muirhead* v. *Salter*, cited in 4 B. & A. 663.

portant point of the above definition is, the agreement to divide the gains and profits. In general, it is laid down "that to constitute a partnership, a communion of profits and loss is essential;" but in *Hubert* v. *Nelson* (*f*) it was held, that an agreement to share profits constituted a partnership, notwithstanding each party was to bear his own losses. As against third parties, an agreement to share profits, involves a liability for the losses of the partnership (*g*); and no agreement between the partners will prevent such liability.

Partnership is usually applied to firms consisting of a few members, larger associations being called "Companies."

The term PARTNERSHIP is usually applied to associations consisting of only a few individuals; for where many persons are connected together for trading purposes, they are called or generally assume the name of a "Company" or "Society;" as The East India Company, The Equitable Society for Assurances on Lives or Survivorships.

Formation of Companies.

Some of these Companies or Societies are established by Act of Parliament; others are incorporated by Royal Charter, and have peculiar privileges granted them; but many of the Companies are formed by the mere agreement of the parties themselves: and these last are in all respects subject to the same laws as a copartnership subsisting between only two or three persons.

The space which has been allotted to the present Title did not admit of the insertion, amongst the following precedents, of a deed for the Settlement of a trading-Company consisting of a great number of persons; and had it been otherwise, a doubt would have been entertained as to the expediency of introducing such a form, considering the disrepute into which Joint Stock Companies have recently fallen; and how very seldom, in comparison with other copartnership transactions, such Companies are now established.

Usual provisions in a Company deed.

In a Deed for the Settlement of a Company it is usual to provide, that the capital shall consist of a definite sum, and be divided into shares; —that no Proprietor shall hold more than a given number of such shares;—that the affairs of the Company shall be conducted by a committee of Proprietors, to be chosen by the general body, and to be called Directors or Managers; and that Treasurers, Trustees, Auditors, and other proper officers shall be appointed; and a great proportion of the deed is devoted to regulations respecting the qualifications and powers of these officers, and the manner in which they shall be appointed and renewed—and the powers of general and extraordinary meetings of Proprietors and Directors, and the manner in which they shall be respectively convened, and the business of their meetings shall

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(*f*) Mont. on Partn. p. 6. 2nd Edit.

(*g*) *Hesketh* v. *Blanchard*, 4 East, 146. *Exparte Hamper*, 17 Ves. 412.

be conducted.—Special regulations are also introduced prescribing the limitations under which shares in the Company may be alienated, and the mode of transfer of such shares, with provisions for the disposal of such shares on the death and bankruptcy of a proprietor—for dissolving the Company and winding up the affairs thereof—and for referring disputes to arbitration: But every such deed will vary according to the objects and nature of the Company; and the magnitude of the concern, and of the interests it involves, will in most cases make it advisable that the deed should be settled by some eminent and experienced conveyancing counsel.

Partnership to be here considered in reference to—its formation, its duration, and its dissolution.

The present Observations will be confined to the consideration of PARTNERSHIP, as subsisting between a few individuals, and will be chiefly of a practical nature; having reference, 1st, to the formation of the partnership; 2nd, to the continuance of it; 3rd, to the dissolution of it, by the act of the parties, or by the act or operation of law; and 4thly, to the adjustment of differences and disputes by arbitration. Under these heads, occasional allusion will be made to the power of partners to bind the firm;—the legal and equitable remedies which one partner has against another, and also against strangers; and the legal and equitable remedies which strangers have against partners.

I. As to its formation.

I. AS TO THE FORMATION OF THE PARTNERSHIP.—Every person *sui juris*, and competent to contract, may form the relation of a partner. An *infant* may be a partner so as to share the profits of the partnership, but he will not be liable for the losses which happen during his minority (*h*). If he continues the partnership after he comes of age, he will of course be liable for the subsequent engagements of the firm, as any other person. A *feme covert* cannot in general sustain the character of partner, because she is unable to enter into any contract, and consequently if a married woman becomes entitled to a share in a banking or mercantile concern, under positive provisions contained in the deed forming the partnership, such share will vest in her husband, and he will become, it is said, a partner in her stead (*i*). A case lately occurred in practice where, previously to the marriage of a woman, an assignment was made to trustees, for her sole and separate use, of certain leasehold premises, in which she then carried on an extensive manufactory, and of the stock and effects belonging thereto, and of all other her estate and effects whatsoever, with the fullest powers from the intended husband to permit her, notwithstanding her

Persons *sui juris* may be partners.

Infant.

Feme covert.

Case of married woman with separate estate, forming a co-partnership.

(*h*) *Glossop* v. *Coleman*. 1 *Stark*. 26. *Goode* v. *Harrison*, 5 B. & A. 157.

(*i*) Gow. on Partn. p. 2.

coverture, to carry on the business for her separate benefit, and free from his control and interference; and it was afterwards found expedient that, for the interest of the business, she should take a partner.

How effected.

To effect this, a deed was prepared by which, after reciting the assignment and the agreement for the copartnership, the woman was made, by virtue of the power of appointment, and trusts for her separate use contained in the assignment, to appoint that the leasehold premises and manufactory, and the stock and effects in, about, or belonging to the same, should be and remain, In trust for the copartnership thereby established, and be deemed part of the capital and joint stock thereof: And that the residue of the estate and effects comprised in the assignment, should be and remain as a security to the new partner for the due observance of the covenants and agreements thereinafter contained, so far as the same were to be observed and performed by the married woman. The remainder of the deed was nearly in the usual form of copartnership deeds, but with provisions for subjecting the share of the married woman in the profits to the *extra* expenses which might be incurred in recovering the debts due to the copartnership, in consequence of her coverture. The husband of the married woman covenanted not to interfere in the affairs of the copartnership, and to do all acts which should be reasonably required of him in reference to the copartnership.

Custom of the city of London.

By the custom of the city of London, a married woman may engage in trade *alone*, and without her husband (*k*); but it does not, perhaps, therefore follow, that she can enter into partnership with other persons. The point does not appear to be alluded to in the different treatises which have been written on partnership.

Alien.

An alien enemy cannot be a partner, unless he is resident here with the consent of the government (*l*); but there seems to be no objection to a partnership with an alien friend, unless he is an artificer (*m*).

A partnership cannot be for illegal purposes.

As stated before (*n*), a partnership cannot be formed for illegal purposes; nor can it be formed between persons, of whom some are qualified, and some unqualified, to engage in the particular trade or business in question (*o*); at least if the disqualified partner is intended to be an acting partner in the business (*p*).

(*k*) Cro. Car. 68. Selwyn's Nisi Prius, p. 286, n. 6th edit.

(*l*) *Albretcht* v. *Sussman*, 2 Ves. and Bea. 323; see also *M'Connell* v. *Hector*, 3 Bos. & Pul. 113; *Exparte Baglehole*, 18 Ves. 525; *De Tastet* v. *Tayler*, 4 Taunt. 233.

(*m*) Comyn's Digest, ALIEN, C. 5, & C. 7.

(*n*) See page 98. (*o*) *Hopkinson* v. *Smith*, 1 Bing. 13.

(*p*) *Reynard* v. *Chase*, 2 Wils. 40.

In many parts of *Europe*, the partners in a trading company are subject to only limited liability, provided the deed or instrument regulating the copartnership be entered on a register kept for that purpose; and in *Ireland*, partners in copartnerships formed under the Anonymous Partnership Act, 21 and 22 Geo. III. c. 46, I. 2, are only liable to the creditors of the concern, to the extent of their respective shares in the copartnership; but in *England*, every member of a copartnership firm is liable, as against the creditors of the concern, to the payment of the whole of the debts contracted by the copartnership; and one partner in a firm may pledge the credit of the other, or others of them, to any amount (*q*). As between the partners themselves, however, there may be, and generally is, some agreement providing for a restricted responsibility, in proportion to the partner's share in the profits of the copartnership. Liability of partners.

From what has been observed, it will be perceived that the formation of a partnership is an act of the greatest importance to the parties concerned; and that it should be entered upon with the utmost deliberation and caution (*r*). A man should not only have the most implicit confidence in the integrity of his partner, but he should also be well acquainted with his temper, and be satisfied of his general prudence, and ability. An unfortunate temper, a disposition to unreasonable speculation, or a general incapacity for business, will often prove as injurious as the want of upright principle. Caution in forming a copartnership.

Partners are sometimes divided into three classes; *acting* partners, *dormant* partners, and *nominal* partners. An *acting* partner is one who not only participates in the profits and losses of the concern, but also appears to the world as a component member of the firm: a *dormant* (or sleeping) partner is one who participates in the profits and losses, but does not appear to the world as a partner; and a *nominal* partner is one who allows himself to appear to the world as a partner, although he has, in fact, no interest whatever in the partnership. The word *allows* is introduced in this definition, because the use of a person's name, in a copartnership, without his knowledge or consent, will not make him liable as a partner. Partners are of three kinds, *Acting*, *Dormant*, *Nominal*.

It will appear to every one, on the slightest reflection, that as

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(*q*) *Coope* v. *Eyre*, 1 H. Bl. 37; 1 Gabbett's Digest, 561; *Carter* v. *Drury*, 1 Ves. and Bea. 157; *Rex* v. *Dodd*, 9 East, 527; *Rice* v. *Shute*, 5 Burr. 2611; *Wright* v. *Hunter*, 1 East, 20; *Doddington* v. *Hallet*, 1 Ves. Sen. 497.

(*r*) *Wells* v. *Masterman*, 2 Esp. 731; and *Baker* v. *Charlton*, Peake, 74. *Crawshay* v. *Maule*, 1 Swanst. 509.

Reason of the liability of dormant partners.

against strangers, a nominal partner should be equally liable with an actual ostensible partner, for the engagements of the partnership; but the reason for subjecting a dormant partner to the like responsibility is not very apparent. It is now, however, well established, that dormant partners are so liable; and the ground seems to be,—that whoever takes a part of the capital, or of the profits of it, takes a part of that fund to which the public have given credit, and to which they look for payment (*s*). In further support of this principle, it has been urged, that if secret or dormant partners were not so liable, they would be receiving usurious interest without risk (*t*); and that such liability is a necessary consequence of the rule, that the act of one partner binds the whole firm (*u*).

Executors liable as others, though merely trustees.

When the executors of a deceased partner continue his share in the partnership after his decease, either by virtue of a provision for that purpose contained in the copartnership articles, or by arrangement with the surviving partners, and receive the profits payable thereon, they become partners in respect of such share, and liable as such, to the creditors of the concern, although they act merely as trustees for the testator's family, and do not allow their names to be added to the trade or firm (*v*).

Distinction between receiving profits, and a salary, in proportion to profits.

It should, however, be here observed, that there is a distinction between a party being entitled to a given share of the profits themselves, as profits, and a party being entitled to a sum of money, in proportion to the profits, as a compensation or reward for his labour and services (*w*). In the former case, the agreement makes the party entitled, a partner in the concern (*x*); but, in the latter, it does not (*y*).

(*s*) *Hubert* v. *Nelson, ubi supra*. *Raynel* v. *Chase*, 1 Burr. 2. S. C.; 2 Wils. 40. See *Morriset* v. *King*, 2 Burr. 891; *Young* v. *Axtell*, 2 H. B. 242; *Grace* v. *Smith*, 2 Black. 998; *Hoare* v. *Dawes*, 1 Doug. 374; *Cooper* v. *Eyre*, 1 H. B. 37; *Morse* v. *Wilson*, 4 T. Rep. 353; *Saville* v. *Robertson*, 4 T. Rep. 794; *Leveck* v. *Shaftoe*, 1 Esp. 468; *Waugh* v. *Carver*, 2 H. Bl. 235; *Benjamin* v. *Porteus*, 2 H. Bl. 510; *Swan* v. *Steele*, 7 East, 210; *Exparte Gellar*, Rose's Cases, 297; and *Cheap* v. *Crammond*, 4 Barn. & Ald. 663.

(*t*) *Hoare* v. *Dawes, ubi supra*.

(*u*) *Coope* v. *Eyre, ubi supra*.

(*v*) *Wightman* v. *Townroe*, 1 Mau. & Selw. 412.

(*w*) Gow on Partn. p. 19.

(*x*) *Benjamin* v. *Porteus*, 2 H. Bl. 590; *Wilkinson* v. *Frasier*, 4 Esp. 182; *Mair* v. *Glenkie*, 4 Maule, 240; *Gibbons* v. *Wilcox*, 2 Stark. 44; *Dixon* v. *Cooper*, 3 Wils. 40; *Wish* v. *Small*, 1 Camp. 331, n.; *Dry* v. *Boswell*, *idid*, 329; *Meyer* v. *Sharp*, 5 Taunt. 74.

(*y*) *Exparte Hamper*, 17 Ves. 404; *Exparte Rowlandson*, 1 Rose, 89; *Exparte Watson*, 19 Ves. 461.

A partnership may be formed, or rather will arise by implication of law, by the bare act of two or more persons trading jointly, without any agreement, either verbal or written: but in most cases, the terms of a partnership are the subject of previous arrangement and agreement; and it is always advisable—to prevent disputes and misunderstandings—that the agreements of the parties should be reduced into writing; and it is usual and prudent to put them into regular form, and let the instrument be under the *seal* of the parties, in order that actions of covenant may be sustained on it against any party neglecting to keep the agreements.

Partnership may be by parol, but a deed under seal is recommended.

If the articles of copartnership are under seal, they will be subject to the common deed-stamp of one pound fifteen shillings for the first skin, and of one pound five shillings for the second and each subsequent skin; but if the articles are not under seal, they will be only subject to an agreement stamp.

Stamp.

Deeds of copartnership will necessarily vary according to the nature of the business, the number of the partners, and the terms and conditions on which the copartnership is formed. The general objects are—to prescribe the nature and duration of the copartnership—the stile of the firm—the place where the business is to be carried on—the amount of the capital to be employed, and the mode in which it shall be contributed—the proportions in which the profits and loss shall be borne—the powers and duties of the partners in regard to conducting the business, and entering into engagements which may affect the copartnership—the time and manner in which the partnership accounts shall be adjusted and settled, and the profits divided—the mode in which the partnership may be dissolved—the conduct which shall be made ground for the expulsion of a partner, where the firm consists of several partners—the manner in which the value of the share of a deceased or expelled partner shall be fixed and paid, where the partnership does not determine by his death or expulsion—the manner in which the affairs of the copartnership shall be wound up and settled on the determination of the copartnership, and the mode in which disputes and differences shall be referred to arbitration.

General objects of copartnership deeds.

Some of the provisions usually inserted in copartnership deeds, are not strictly necessary, as the obligations arising on them would be imposed by law, if they were not in the deed,—as that the partners will be just and faithful, and render true accounts—that they will not, during the copartnership, engage in the like trade—and that they will pay their separate debts (*z*);—but it is generally most satisfactory to

(*z*) *Goodman* v. *Whitcomb*, 1 Jac. & Walk. 592; *Morris* v. *Coleman*, 18 Ves. 438; *Glassington* v. *Thwaite*, 1 Sim. & Stu. 133.

the partners to have these obligations expressly stated, as with some people, a mere reference to the articles will often be sufficient to put an end to disputes.

It is impossible, in the articles of copartnership, to lay down the precise manner in which the business is to be conducted, or the books of account are to be kept, or how far each partner is to employ himself in the business; and therefore provisions on these, and the like points, are usually penned in the most general terms; and in case of dispute, reference must be had to arbitration. Where it is intended that one of the partners should not be obliged to attend to the business, a stipulation to that effect should be introduced.

Provision as to subsistence money.

In most cases, it is proper to provide in the articles what quarterly, monthly, or weekly allowance shall be made to the partners for their subsistence and private use; as the *profits* cannot be ascertained till the settlement of the yearly accounts, and the partners must generally have an allowance from the trade, for private and family purposes, whether the trade is lucrative or not. If the amount is fixed before the copartnership is formed, disputes on this head will be prevented.

Expulsion.

Where a clause for the *expulsion* of a partner is introduced, great care should be taken in expressing the events in which such power may be exercised; and it is generally prudent to stipulate, that an expelled partner shall not be at liberty to carry on the like trade within a given distance from the partnership place of business, during the remainder of the copartnership term, or some other definite period of time.

How affected by bankruptcy.

It is not uncommon to provide in copartnership deeds, that on the bankruptcy of a partner, his share shall be taken by the solvent partners, at a sum to be fixed by valuation, and to be payable by instalments, in the course of eighteen months, or two or more years; but it seems very questionable, whether such a provision is not void by the statutes concerning bankrupts (*a*).

When a person is introduced into a partnership on purchasing a share, a provision should be inserted for securing to him a proper introduction to the connection: more particularly where the partnership relates to a professional practice.

Provision on retirement or death.

In preparing copartnership deeds, particular attention should be paid to the manner in which the affairs are to be adjusted in the event of the retirement, expulsion, or death of a partner. In most cases, it is simply provided, that the share of a retiring, expelled, or deceased partner, shall be valued; and that the continuing or surviving partner shall give his bond for securing the payment of such value, with interest, by instalments; but, in many instances, such a bond can scarcely

(*a*) *Wilson* v. *Greenwood*, 1 Swanst. 471.

be deemed an adequate security; especially where the amount of the capital of the copartnership is considerable. In other cases, it is stipulated, that the share of the retiring, expelled, or deceased partner, in the partnership effects, shall be assigned to a trustee, in trust, to secure the payment of the sum at which the share may be valued, at the times and in manner agreed upon; but such assignment, if acted on, will be the occasion of considerable difficulty and inconvenience in disposing of the copartnership stock and effects; and if not acted on, there is little or no utility in having it. Sometimes it is provided, that the continuing or surviving partners shall, by the joint and several bond of themselves, and of some sufficient and responsible *surety* or *sureties*, secure the value.

Stipulated damages.

In order effectually to provide for the observance or performance of some of the stipulations which may be agreed upon, it will, in many cases, be found expedient to add a covenant, that on non-performance of the agreement, the party breaking it shall pay to the other party, a given sum of money, as liquidated damages; see *post*, 115, and references, and the late case of *Kemble* v. *Farren*, in the Common Pleas, which will shortly be reported.

Power to appoint a successor.

If it be intended that a partner should have power to introduce a son or other person into the business after his death, a provision to that effect should be inserted in the articles, as otherwise he cannot do so. 2 Ves. Sen. 33—34.

For more particular information respecting the clauses usually inserted in copartnership deeds, the reader is referred to the Precedents; and it may be as well to mention in this place, that if the parties do not act in conformity with the articles, in regard to any clauses or provisions, the articles will be read, in equity, as if those clauses or provisions were expunged (*b*).

As to the continuance of a partnership.

II. As to the continuance of a partnership.—Prior to the formation of a partnership, the parties should be fully apprised of their respective powers and liabilities; but as these powers and liabilities arise on, and exist during the continuance of, the partnership, the consideration of them seems to fall most appropriately under this head; but from the limits, within which these observations must be confined, only a slight notice can be taken of them.

Each partner liable for the acts of the others;

For the furtherance of trade, and the support of good credit amongst merchants, it has been found necessary to make every member of a firm, accountable for the acts of his copartners in all matters that

(*b*) *Jackson* v. *Sedgwick*, 1 Swanst. 469.

but no person can avail himself of this power who is guilty of collusion, fraud, &c.

concern the copartnership business, and to vest in him the fullest power of disposing of the copartnership effects, and purchasing others for the firm (*c*): but no person can avail himself of this power, who is guilty of any fraud or collusion, or who has notice from the other partners not to supply goods to the firm without their concurrence, or who knows that the transaction, in reference to which the demand arises, is not a copartnership transaction (*d*).

This power of a partner to bind the firm, is usually divided into,—his ability to do so by simple contract; by bills and notes; by guarantee; by deed; by legal and equitable proceedings; and by bankruptcy (*e*). Under the head of simple contract, may be included the liabilities which arise from the negligence or misconduct of a partner (*f*).

Power of one partner to bind firm by deed.

In partnership transactions, one partner may bind the firm by deed, if he executes it in the presence, and by the authority (though *verbal*) of his copartner; but a partner cannot, in the absence of his copartner, execute a deed which will be binding on such copartner, unless he has authority to do so by *deed* (*g*). A deed of release, however, by one partner, without the consent of the others, will, in general, be valid against all (*h*).

Effect of notice to one of a firm.

One partner may prove debts, and sign bankrupt's certificate.

In legal proceedings, it is a general rule, that notice to one partner, in a *bonâ fide* transaction, is notice to all (*i*); and in bankruptcy, one of the partners may prove a joint debt, or singly vote in the choice of assignees, and may alone sign a bankrupt's certificate, without any express authority (*k*).

(*c*) *Anon.* v. *Layfield,* Holt, 434; 1 Salk. 292; *Fox* v. *Hanbury,* Cowp. 445; *Barton* v. *Williams,* 5 B. & A. 408; *Lambert's* case, Godbolt, 244.

(*d*) *Bond* v. *Gibson,* 1 Camp. 185; *Shirreff* v. *Wilks,* 1 East, 48. *Willis* v. *Dyson,* 1 Stark, 164; *Exparte Peele,* 6 Ves. 603.

(*e*) See the Treatises of Watson, Montague, Gow, and Cary.

(*f*) *Rapp* v. *Latham,* 2 B. & A. 795; *Wilcott* v. *Chamber,* Cowp. 814; *Barton* v. *Hanson,* 2 Camp. 97; 2 Taunt. 49.

(*g*) *Harrison* v. *Jackson,* 7 T. R. 207; *Thomason* v. *Frere,* 10 East, 418; *Ball* v. *Dunsterville,* 4 T. R. 313; *Burn* v. *Burn,* 3 Ves. 578; 1 Chit. R. 707.

(*h*) *Aston* v. *Booth,* 4 Moore, 192; *Furnival* v. *Weston,* 7 Moore, 356.

(*i*) *Bignold* v. *Waterhouse,* 1 M. & S. 259; *Carrington* v. *Cantillon,* Bunb. 107.

(*k*) *Exparte Mitchell,* 14 Ves. 597; *Exparte Hall,* 17 Ves. 62.

The remedies which the law gives to partners, as between each other, for wrongs relating to the partnership, are usually divided into legal, and equitable. The remedies at law are assumpsit, covenant, account, and trover. Assumpsit will lie on an express promise to account; but the plaintiff must confine himself to the damage he has sustained from the defendants not accounting (*l*): he cannot go into the particulars of the account. Assumpsit will also lie for the balance of an account after it has been ascertained; but it is generally necessary, to support the action, to prove an express promise to pay (*m*). One partner may also, in an action of assumpsit, obtain contribution from another, as for money laid out to his use (*n*). By the action of covenant, one partner may obtain from another damages for the non-performance of any of the covenants contained in the articles; as where there is a covenant to account annually, one partner may recover damages on the breach of it (*o*). It seems, however, that no action can be maintained for neglecting or refusing to nominate an arbitrator, pursuant to an agreement to refer matters to arbitration (*p*). The action of account, though still maintainable, has fallen into entire disuse, as the remedy by account in equity is so much more satisfactory. The action of trover is seldom brought by one partner against another, except for the destruction of the copartnership property, which is held to amount to a wrongful conversion (*q*). Legal remedies between partners.

With respect to the equitable remedies between partners, it is to be observed, that in general a court of equity will not enforce the specific performance of covenants contained in articles of partnership; nor assist in the management of a partnership business; nor appoint a receiver during the continuance of the copartnership: but if the breach of the covenants is of such a nature as to entitle the complainant to call for a dissolution of the partnership, then the court will interpose; and if necessary, will appoint a manager till the affairs of the concern can Equitable remedies.

(*l*) *Wilkin* v. *Wilkin*, Salk. 9.

(*m*) *Coffee* v. *Brian*, 3 Bing. 54. *Fromont* v. *Coupland*, 2 Bing. 170. *Foster* v. *Allanson*, 2 T. R. 479. *Clark* v. *Glennie*, 3 Stark. 10. *Rackstraw* v. *Sinber*, Holt. 368.

(*n*) *Abbott* v. *Smith*, 2 Bl. 947. *Evans* v. *Yeatherd*, 2 Bing. 133. *Wright* v. *Hunter*, 5 Ves. 792; 1 East, 20. *Hutton* v. *Eyre*, 1 Marsh. 603. *Carlen* v. *Drury*, 1 Ves. & Bea 157. *Geddes* v. *Wallace*, 2 Bligh, 270. *Burnell* v. *Minot*, 4 Moore, 340.

(*o*) *Moravia* v. *Levy*, 2 T. R. 483 n. *Venning* v. *Leckie*, 13 East, 7.

(*p*) *Tattersall* v. *Grote*, 2 Bos. & Pul. 131. (*q*) Mitford, Pl. 110.

(*r*) *Barnardiston* v. *Chapman*, 4 East, 121.

In what cases equity will interfere.

be wound up and settled (*s*). Equity will, however, restrain a partner from accepting or negociating bills of exchange for or in the name of the partnership, except the same be given or negociated for the purposes of the partnership, and also from pledging the credit of the firm in discharge of his separate debt (*t*); and in the case of *Goodman* v. *Whitcomb* (*u*), Lord Eldon expressed a doubt whether a Court of Equity would not in some cases restrain a partner from acting in opposition to his covenants, although his conduct might not be such as to give the other partners a right to call for a dissolution of the partnership.

Account in Equity.

It seems at present unsettled whether a bill in Equity, by one partner against another for an account, can be entertained, if it do not pray a dissolution of the partnership (*v*); but the better opinion seems to be, that it may. In *Harrison* v. *Armitage* (*w*) the *Vice Chancellor* observed, that a bill for an account was the only relief that a partner had; and that it was only on an application for *interim* management that it was necessary to pray for a dissolution. If the partnership is already dissolved, or a dissolution is decreed, an account will be ordered as a matter of course. The modern practice is to refer the accounts to the Master; and unless a particular mode of taking them is prescribed by the articles, equity will settle the accounts in the usual way (*x*).

Relief in cases of fraud or error.

In cases of fraud or error, equity will allow a stated account to be opened after a considerable lapse of time; but it will not interfere unless the fraud or error be specified in the bill, and be proved as specified. The inclination of the court is against unravelling old accounts (*y*). If an account be kept by the party to whom it is sent, for any length of time, without objection, it will be considered as a settled account; and the expression "errors excepted" will not prevent its being so treated (*z*).

(*s*) *Carlen* v. *Drury*, 1 Ves. & Bea. 154. *Oliver* v. *Hamilton*, 2 Anst. 453. *Marshall* v. *Colman*, 2 Jac. & Walk. 268; and see note to *Glassingham* v. *Thwaits*, 1 Sim. & Stu. 124.

(*t*) *Williams* v. *Bingley*, 2 Vern. 278 n. *Exparte* Agaoe, 2 Cox, 316. 16 Vin. Abr. 242.

(*u*) 1 Jac. & Walk. 592.

(*v*) *Forman* v. *Homfray*, 2 Ves. & Bea. 329. (*w*) 4 Madd. 143.

(*x*) *Knowles* v. *Houghton*, 11 Ves. 168. *Jackson* v. *Sedgwick*, *ubi supra*.

(*y*) *Wharton* v. *May*, 5 Ves. 27. *Roberts* v. *Kuffin*, 2 Atk. 113. *Beaumont* v. *Boultbee*, 2 Ves. 485. *Gray* v. *Minnethorpe*, 3 Ves. 103. *Chambers* v. *Goldwin*, 5 Ves. 857. *Taylor* v. *Haylin*, 1 Cox, 435.

(*z*) *Willis* v. *Jernegan*, 2 Atk. 252. *Tickell* v. *Short*, 2 Ves. sen. 329. *Johnson* v. *Curtis*, 3 Bro. C. C. 266.

Notwithstanding the legal and equitable remedies before pointed out, it is most common for partners to submit any disputes which may arise between them to arbitration. When these differences are so serious as to make a reference to the courts necessary, it is not likely that the partnership will much longer continue. Reference to arbitration most usual.

As a general rule, partners have the same remedies as private individuals in proceedings against strangers, as well at law as in equity; but in such proceedings, and in proceedings against the partners, nice questions in pleading and in evidence frequently arise from the partnership relation, which it is unnecessary to consider here.

III. As to the dissolution of a partnership.—A partnership may be dissolved by the act of the parties, or by the act or operation of law. Dissolution of partnership.

It is usual to provide in the articles of copartnership, during what period the copartnership shall exist; for if no time is specified for its continuance, it is dissolvable at the pleasure of either party, at any time (*a*). If the partnership be for a limited period, it may be dissolved at any time by the consent of *all* the partners; and the existence of engagements with third parties will not prevent it (*b*). By the act of the parties.

A partnership may of course be dissolved by one, or more, or the majority of the partners, if there be an express power for that purpose in the articles; and if a partner be expelled from the partnership under a power, it will operate as an entire dissolution of the copartnership if there be only one remaining partner, and as a partial dissolution of it if there are two or more remaining partners.

A partnership between two persons is dissolved by the death of either party, although the intended term of its continuance is unexpired (*c*); and a partnership between three or more persons will also be dissolved by the death of one of the partners, unless it be continued between the survivors by express stipulation in the articles (*d*). By death.

There is strong ground to contend that the marriage of a *feme sole*, being a partner, would effect a dissolution of the partnership (*e*); but this point has not yet been decided. By marriage.

It seems that a purchase of a leasehold interest may be so made as to

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(*a*) *Hercy* v. *Birch*, 9 Ves. 357. *Peacock* v. *Peacock*, 16 Ves. 49. *Featherstonhaugh* v. *Fenwick*, 17 Ves. 298; and see 1 Swanst. 512, n.

(*b*) *Featherstonhaugh* v. *Fenwick*, *supra*. *Baring* v. *Dix*, 1 Cox, 213.

(*c*) *Vulliamy* v. *Noble*, 3 Merivale, 614. *Crawshay* v. *Maule*, 1 Swanst. 509.

(*d*) *Gillespie* v. *Hamilton*, 3 Mad. 254.

(*e*) Wats. on Partn. 384. 1 Swanst. 517, n.

imply a contract for partnership, during the continuance of such interest (*f*).

By act or operation of law.

A partnership may also be dissolved by the award of arbitrators (*g*); by the decree of a court of equity (*h*); by the bankruptcy of a partner (*i*); and by a sale of the copartnership effects under a separate execution (*k*).

The grounds on which a Court of Equity will decree a dissolution.

The grounds upon which a court of equity will dissolve a copartnership are,—insanity which is likely to be permanent (*l*),—such a change of circumstances as render it impossible that the partnership should be carried on according to the original intention of the parties (*m*),—or a gross abuse of good faith between the parties (*n*).

Where a partner has a right to appoint a person to succeed, upon his death, to his share of the business, and the person appointed refuses to accept the share, the partnership stands dissolved from the time of the decease of the partner making the appointment (*o*).

Expiration by effluxion of time.

When the partnership is determined by effluxion of time, it is said to have *expired*; and the affairs will then be generally wound up, as upon a dissolution.

Usual arrangement on dissolution.

If, after the expulsion or death of a partner, the partnership continues between the other or surviving partners, it is usual for the continuing or surviving partners to take the whole of the stock, debts, and effects of the copartnership, and to secure to the expelled partner, or the executors of the deceased partner, the value of the share of such expelled or deceased partner in the copartnership, by instalments, with interest.

If the copartnership term expires in the life-time of the parties, or the copartnership is dissolved by mutual consent, an arrangement is usually made as to the division of the stock, and the collection and division of the outstanding debts, and it is generally advisable to have a deed for carrying this arrangement into effect, and for the partners to execute mutual releases.

(*f*) 1 Swanst. 521.

(*g*) *Green* v. *Waring*, 1 Black. 475.

(*h*) *Waters* v. *Taylor*, 2 Ves. & Bea. 299. *Chapman* v. *Beach*, 1 Jac. & Walk. 594. *Liardet* v. *Adams*, Mont. on Partn. 112, 2d edit.

(*i*) *Pidcock* v. *Kilby*, Mont. on Partn. 113, 2d edit.

(*k*) *Waters* v. *Taylor*, *supra*.

(*l*) *Waters* v. *Taylor*, *supra*.

(*m*) *Baring* v. *Dix*, *supra*.

(*n*) *Goodman* v. *Whitcomb*, *supra*.

(*o*) *Kershaw* v. *Matthews*, 2 Russ. 62.

Notice should be given of dissolution.

Upon the dissolution of a copartnership by agreement, it is proper that a notice thereof should be inserted in the London Gazette, and that similar notice should be given or sent to all the persons with whom the partners may have had any dealings, in relation to their copartnership (*p*); and if the business is continued by any of the partners, great care should be taken by the *retiring* partners, that they do not, by the allowed use of their name, or otherwise, continue their liability as partners, as against strangers (*q*).

Usual decree on dissolution.

If the copartnership is dissolved by a decree in equity, reference will be made to the master to take the accounts of the copartnership, sell the effects, pay the debts and costs, and divide the surplus; and generally a receiver will be appointed (*r*).

Division by the general law of partnership.

In a late case, where it was provided by the articles, that upon the expiration of the copartnership the stock should be divided, received, and taken by the partners according to their respective interests, it was held, that such a provision could not be literally carried into execution; and, therefore, that by the general law of partnership, the settlement of the affairs must be made by *sale*, and division of the produce (*s*).

Bankruptcy.

The adjudication that one of the partners in a firm is bankrupt, dissolves the copartnership; but the joint tenancy, which subsists in parnership property, is not severed till the assignment from the commissioners.

Effect of the assignment in bankruptcy.

Upon the execution of this assignment, the share of the bankrupt partner in the copartnership property passes to his assignees; and, it has been said, that if the copartnership property be in the possession of the bankrupt partner at the time of his bankruptcy, the assignees may take the whole and sell it,—accounting to the other partner for his share. But in a recent case, where the assignees, under such circumstances, took possession of the whole of the copartnership property, and were about to sell it, the *Vice Chancellor* granted an injunction restraining the sale (*t*).

It seems, that upon the dissolution of a partnership by death, the

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(*p*) *Godfrey* v. *Turnbull*, 1 Esp. N. P. C. 371; *Routh* v. *Quin*, 7 Price, 193; *Goode* v. *Harrison*, 5 B. & A. 157; *Graham* v. *Hope*, Peake, 154.

(*q*) *Fereday* v. *Hordern*, 1 Jac. 144; *Bloxham* v. *Pell*, 2 Bl. 998; *Williams* v. *Keats*, 2 Stark. 290; *Dolman* v. *Orchard*, 2 Car. & Pay. 104.

(*r*) *Young* v. *Keighly*, 15 Ves. 557; *Ruffin Exparte*, 6 Ves. 127; *West* v. *Skip*, 1 Ves. sen. 242; 2 Swanst. 586. *Crawshay* v. *Collins*, 15 Ves. 230.

(*s*) *Cook* v. *Collingridge*, 1 Jacob, 607.

(*t*) *Smith* v. *Stokes*, 1 East, 367; *Allen* v. *Kilbree*, 4 Madd. 464.

partners' interest in the *real* property belonging to the copartnership will be distributable as personal estate (*u*).

Arbitration.

IV. As to the reference to arbitration of copartnership differences.—In most copartnership deeds a provision is inserted for referring to arbitration, all differences and disputes which may arise between the partners, during the continuance or after the determination of the copartnership, concerning the articles, or any matter relating to the business.

As before stated, no action at law can be maintained on this agreement; nor can it be made the subject of a bill in equity for specific performance (*v*); nor can it be pleaded in bar to a suit instituted by one partner against another on account of the subject matter of such disputes (*w*).

Although an agreement to refer disputes to arbitration will not oblige the parties to do so before they apply to a court of equity for relief, yet it may, in some cases, be urged as a bar to the interference of the court, until the parties have resorted to the proceedings for terminating disputes prescribed by the articles (*x*).

Whether a covenant might not be so framed as to exclude the jurisdiction of the superior courts, seems questionable.

One partner cannot bind the firm in a submission to arbitration of disputes between the firm and another individual, unless he has authority to do so from his partners. He will, however, himself be bound by the award should it be made against him (*y*).

It seems, that if a partner executes a deed on the understanding that it will be executed by all the partners, he will not be bound by it unless the other partners also execute it (*z*).

For further information on Partnership, the reader is recommended to consult the very able treatise of Mr. Gow.

(*u*) *Ripley* v. *Waterworth*, 7 Ves. 425; *Balmain* v. *Shore*, 9 Ves. 500; *Townshend* v. *Devaynes*, Mont. on Partn. in notes, p. 97; *Selkrig* v. *Davies*, 2 Dow. P. C. 242.

(*v*) *Price* v. *Williams*, cited 6 Ves. 818; *Milnes* v. *Gery*, 14 Ves. 400; *Gourlay* v. *Duke of Somerset*, 19 Ves. 431; *Rowe* v. *Wood*, 1 Jac. & Walk. 346.

(*w*) Lord Redesdale Tr. on Pl. 214; *Wellington* v. *Mackintosh*, 2 Atk. 570; *Mitchell* v. *Harris*, 4 Bro. C. C. 311, and see Bos. & Pul. 181; *Waters* v. *Taylor*, 15 Ves. 18; *Thompson* v. *Charnock*, 8 T. R. 139.

(*x*) *Waters* v. *Taylor*, *supra*; *Carlen* v. *Drury*, *supra*.

(*y*) *Strangford* v. *Green*, 2 Mod. 228. *Stead* v. *Salt*, 3 Bing. 101.

(*z*) *Autram* v. *Chase*, 15 East, 209; and see *Dutton* v. *Morrison*, 17 Ves. 193.

BETWEEN TRADERS.

DEED *of* PARTNERSHIP *between* [ ](*a*), *where the Parties succeeded to a Business, and the Person* RETIRING *from the Business was allowed for the first Five Years of the Term to continue to* SUPERINTEND *the same, so far as he might think proper so to do.* (Simple Form.)

THIS INDENTURE, made the day of Dec. 18 , BETWEEN [A.] of, &c. of the first part; [B.] of the same place, (a nephew of the said [A.],) of the second part; and [C.] of, &c. of the third part. WHEREAS the said [A.] hath for some years past followed and carried on, and still follows and carries on, in the house and premises wherein he now resides, in Street aforesaid, the trade or business of a [ ]. AND WHEREAS the said [A.] is desirous of retiring from the said trade or business, and of settling his nephew, the said [B.], therein, in conjunction with the said [C.], upon equal terms of profit and loss, for such time and under such conditions as are hereinafter mentioned and expressed. AND WHEREAS it hath been agreed that the said [C.] should pay to the said [A.] for the moiety or half part or share of him the said [C.], of and in the said trade or business, the sum of at the times and in the manner hereinafter mentioned; *And* that he should in the mean time secure the same with interest, by his bond or obligation in writing. AND WHEREAS F. B. (the father of the said [B.],) hath agreed to advance and lend the said [B.] and [C.], the sum of for the purposes of their copartnership business, on having the repayment thereof, with interest for the same, secured at the times and in manner hereinafter mentioned, by the joint and several bond or obligation of the said [B.] and [C.]. AND WHEREAS in pursuance and performance

Parties.

Recital that A. is desirous of retiring from business;

and of settling B. his nephew therein in conjunction with C.:

that C. should pay —— *l.* for his moiety at the times after mentioned,

and secure the same by his bond:

that it had been agreed, that F. B. should advance —*l.* to the copartnership, on the security of the joint and several bond of B. and C.;

that C. had

(*a*) This form was drawn for tailors, but will answer for any other trade, where the business and concerns are not very considerable.

BETWEEN TRADERS.

given to A. his bond for securing the — *l.* with interest:

of the said agreement in this behalf, the said [C.] hath by his bond or obligation in writing, bearing even date with these presents, become bound to the said [A.], his executors and administrators, in the penal sum of subject to a condition written under the said bond for making void the same, on payment by the said [C.], his heirs, executors, or administrators, to the said [A.], his executors, administrators, or assigns, of the sum of and interest for the same, after the rate of 5*l.* for 100*l.* by the year, at the times and in manner hereinafter mentioned; (that is to say;) the sum of by ten several instalments of each, the first instalment to be made on the first day of July then next, the second instalment to be made on the first day of January, then following, and one other of the remaining eight instalments to be made on every succeeding first day of January and first day of July, till the whole be paid; *And* the interest on the said sum of or on so much thereof as shall for the time being remain due, to be paid by equal half yearly portions, on the first day of July and the first day of January in every year.

that the father of B. had paid the — *l.*

and that B. and C. had given their joint and several bond for securing the repayment of it with interest:

And whereas the said [F. B.], in pursuance and performance of the said agreement, hath this day advanced and lent to the said [B.] and [C.], for the purposes of their said copartnership, the sum of ; *And* for securing the repayment thereof, with interest, as aforesaid, the said [B.] and [C.] have, by their bond or obligation in writing, bearing even date with these presents, become jointly and severally bound to the said [F. B.], his executors and administrators, in the penal sum of subject to a condition written under the said bond for making void the same, on payment by the said [B.] and [C.], or either of them, or their or either of their heirs, executors, or administrators, to the said [F. B.], his executors, administrators, or assigns, of the sum of , with interest for the same after the rate of 5*l.* for 100*l.* by the year, at the times and in manner following; (that is to say;) the sum of by two instalments of each, the first of the said instalments to be made on the first day of January, 18 , and the other of the said instalments to be made on the first day of January, 18 , and the interest on the said sum of or on so much thereof as shall for the time

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being remain due, to be paid by equal half yearly portions, on the first day of July, and the first day of January, in every year. AND WHEREAS, for the more perfectly carrying the agreement of the said parties hereto into effect, it hath been agreed that they should enter into the covenants hereinafter on their parts contained. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said last mentioned agreement, and in consideration of the premises, each and every of them, the said [A.], [B.], and [C.], so far as relates to the observance and performance by him, his heirs, executors, and administrators, of the covenants and agreements hereinafter contained, on his and their parts to be observed and performed, but not further or otherwise, *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the others and each of the others of them and their, and his respective executors and administrators, in manner following; (that is to say:)

that the parties had agreed to covenant as after mentioned.

Testatum.

Each of the parties, so far as relates to his own acts, covenants with the others, as follows; *i. e.*

THAT they the said [B.] and [C.], shall and will become, continue, and be joint traders and copartners, in the trade or business of a [ ], for and during the term of ten years, to be computed from the first day of January now next ensuing, upon or under, and subject to the terms, stipulations, conditions, and agreements, hereinafter mentioned and contained: *And* that during the continuance of the said copartnership, the said [A.] shall not carry on the trade or business of a [ ], within two miles of Street aforesaid, or be employed as [ ] by or for any person by or for whom he has been so employed, prior to the day of the date hereof (*a*).

That B. and C. will be partners in the business of [ ] for ten years from the 1st of Jan. next, upon the terms after mentioned; and that A. will not, during the copartnership, carry on the business of [ ] within two miles, or be employed for his former customers;

(*a*) After a provision of this kind, it is usual to add a clause to this effect:—

"AND that if the said [A.] shall at any time act contrary to or infringe this covenant and agreement, he shall immediately thereupon pay to the said [B.] and [C.] the sum of pounds, as or by way of stated or liquidated damages, to be divided between the said [B.] and [C.] in equal shares."

Stated or liquidated damages.

In many cases it would be difficult, if not impossible, for a jury to

Difference be-

BETWEEN TRADERS.

That possession of the premises shall be given up to B. and C.; but A. shall, during the first five years of the copartnership, have the use of a bed-room.

THAT on the first day of January now next, possession of the said house and premises in Street aforesaid, in which the said [A.] now resides, shall be given up to the said [B.] and [C.], who shall thereupon become the immediate tenants of the owner thereof, but during the first five years of the said copartnership, the said [A.] shall be allowed the use of the front bed-room on the second floor, for his own exclusive use, without paying any rent for the same.

That the furniture and fixtures shall be purchased by the copartnership at a valuation, and become part of the capital.

THAT the furniture and fixtures in and about the said house and premises, and belonging to the said [A.], shall be taken at the valuation of of appraiser, and shall be paid for by the said [B.] and [C.] out of the monies of their said copartnership, and shall be considered as part of the joint stock thereof.

That the firm of the copartnership shall be "B. and C."

THAT the firm and style of the said copartnership shall be "[B.] and [C.]."

That the business shall be carried on in street aforesaid.

THAT the business of the said copartnership shall be carried on at or in the said house and premises in Street aforesaid, in which the said [A.] now resides, or at or in such other place or places, as the said [B.] and [C.] shall hereafter agree upon (*b*).

That the capital shall con-

THAT the capital or joint stock of the said copartnership

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tween *penalty* and *liquidated damages*.

determine what damages one party ought to receive from another, for the violation of an agreement between them: and therefore, in such cases, the parties should themselves fix the amount. Where articles contain covenants for the performance of several things, and then one large sum is stated, at the end, to be paid upon breach of performance, that must be considered as a *penalty*; in which case, only the *quantity of damage* sustained is recoverable. But where it is agreed, that if a party do a particular thing, such a sum shall be paid by him, there the sum stated is considered as *liquidated damages*, and the whole is recoverable. See 2 Bos. Pul. 346, and cases there cited.

It is important clearly to express the intention of the parties, as to whether the sum is to be considered as a *penalty*, or as *liquidated damages*; for it would seem that the mere words "*penalty*," or "*liquidated damages*," will not prevent the *intention* of the parties from being collected from other parts of the instrument. The cases on this subject are stated in a note in 3 Byth. p. 441.

(*b*) Where the premises on which the business is to be carried on

shall consist of the sum of , which has been so advanced and lent by the said [F. B.] to the said [B.] and [C.], as hereinbefore is mentioned, and shall be considered as brought in by them the said [B.] and [C.], in equal shares and proportions.

sist of the sum lent by F. B., and be considered as brought in by B. and C. in equal shares.

THAT the said capital or joint stock, and the increase thereof, and the gains and profits arising from the same respectively, shall (subject as hereinafter is mentioned) be used and employed in the business of the said copartnership.

That the capital and the profits shall (subject as after mentioned,) be employed in the business.

THAT the said sum of and interest, secured to the said [F. B.], by the hereinbefore recited bond of the said [B.] and [C.], as aforesaid, shall be raised and paid as the same shall become due and payable, by and out of the profits of the said copartnership business, or by the said [B.] and [C.], by and out of their respective separate estates, in equal shares and proportions.

That the sum lent by F. B. shall be paid out of the profits of the business, or by the partners out of their separate estates equally.

THAT during the first five years of the said copartnership, the trade and business thereof shall be under and subject to the management, superintendence, and control of the said [A.], and that the said [A.] shall during that time, in all respects, have as full and ample power over the said trade and business, and the stock, monies, debts, and effects of the said copartnership, as if he was actually a partner therein, and for that purpose shall at all times

That during the first five years of the copartnership the business shall be under the superintendence and controul of A.

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belong to one of the partners, it is usual to make him agree to grant a lease thereof: as,

"THAT the said [A.] shall, when so required by the said [B.], grant to a trustee or trustees, to be named by the said partners, *In trust* for the copartnership, a lease of the said messuages, buildings, &c. with their appurtenances, for the then remainder of the said copartnership term, at the yearly rent of pounds, to be payable by two equal half yearly payments, on the day of and the day of , in every year; *And* that in the mean time and until such lease shall be granted, the said messuages, buildings, &c. shall be peaceably and quietly held and enjoyed by the said partners, at the yearly rent of pounds, payable on the half yearly days hereinbefore mentioned."

That A. should grant a lease to a trustee for the copartnership.

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have full and free liberty to enter into and upon the house and premises where the business of the said copartnership shall for the time being be carried on.

That C. shall pay the — *l.* and interest, secured by his bond, to A. as they become due, and indemnify the copartnership effects therefrom.

THAT the said [C.], his executors or administrators, shall pay the sum of pounds, and interest, secured to the said [A.] by the said recited bond of the said [C.] as aforesaid, as the same shall respectively become due and payable, and shall indemnify the said [B.], his executors, and administrators, and the stock and effects of the said copartnership, from and against the payment of the same, and all actions, suits, losses, and expenses, for or on account thereof.

But that if C. shall make default in payment, it shall be lawful for B. and also for A., to take it out of the monies belonging to the copartnership.

THAT although as between the said [B.] and [C.], it is intended that the said sum of and interest, secured to the said [A.] as aforesaid, shall be the sole and exclusive debt of the said [C.], and be paid out of his separate estate, *Yet that* as between the said [A.] and the said [B.] and [C.], the said sum and interest shall be also considered as a debt due from the said copartnership; and that if default shall be made by the said [C.], his executors or administrators, in payment of the same sum and interest, or any part thereof, at the times and in manner aforesaid, it shall be lawful for the said [B.], and also for the said [A.], to take out of the monies belonging to the said copartnership, so much of the said sum, and interest, as shall for the time be due, and to retain or apply the same in payment of such sum and interest accordingly.

That if any sum shall be paid out of the copartnership monies under the last clause, it shall be placed to the debit of C.'s account with the copartnership, and carry interest.

THAT all sums of money (if any) which shall be taken out of the said copartnership, for the payment to the said [A.], his executors or administrators, of the said sum of and interest, under the authority aforesaid, shall be placed to the debit of the account of the said [C.], with the said copartnership, and shall bear or carry interest after the rate of 5*l.* for 100*l.* by the year, until the same shall be repaid.

That the rent and taxes of the premises belonging to the copartnership, and the expenses of the business, shall be paid out of

THAT the rent and taxes of the house and premises where the business of the said copartnership shall be carried on, and the expenses of repairing and insuring the same, and of insuring the stock and effects of the said copartnership, and the wages and maintenance of all journeymen, apprentices, clerks or servants, to be employed in or about the

said business, and all expenses, losses, and damages, which shall be incurred or sustained in carrying on the same, or in anywise relating thereto, shall be paid and borne by and out of the gains and profits of the said copartnership business, or (in case the same shall be deficient) by the said [B.] and [C.], by and out of their respective separate estates, in equal shares and proportions.

the profits, or by the partners equally.

That the said [B.] and [C.] shall be entitled to the clear net gains and profits arising from the business of the said copartnership, in equal shares and proportions, and shall receive and divide the same, at the times and in manner hereinafter expressed.

That B. and C. shall be entitled to the gains and profits of the copartnership in equal shares.

That on Monday, the day of January now next ensuing, and on every succeeding Monday during the continuance of the said copartnership, it shall be lawful for each of them, the said [B.] and [C.], to take out of the monies and effects of the said copartnership the sum of for his respective weekly support and subsistence; and that neither of them shall take out of the said monies and effects any further or other sum or sums of money for his own separate use, without the consent in writing of the other of them; and that, while any monies shall remain due and owing to the said [A.] from the said [B.] and [C.], or either of them, neither of them, the said [B.] and [C.], shall or will take, out of the monies and effects of the said copartnership, for his own separate use, any further or other sum or sums of money than the said weekly sum of without the consent in writing of the said [A.], for that purpose first had and obtained.

That each of the partners may, on every Monday, take out of the monies of the said copartnership for his weekly support; and that neither of them shall take out any further sum without the consent of the other in writing; or, while any monies shall remain due to A., without the like consent of A.

That on the 24th day of June, and 25th day of December, in the year now next ensuing, and on every succeeding 24th day of June and 25th day of December, during the continuance of the said copartnership, a full and general account and rest shall be made and taken by the said [B.] and [C.], of the stock, monies, debts, and other things belonging or due and owing to the said copartnership, and of all such debts as shall be owing from or by the said copartnership, to any person or persons, by reason of the said business, and of all such other matters and things as are usually comprehended in accounts of the like nature taken by persons engaged in the trade

That the partners shall make up half-yearly accounts and rests.

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or business of [ ], and that a just valuation and appraisement shall be made of all the particulars included in such account, which are in their nature susceptible of valuation and appraisement; and that a fair copy of such general account, rest, valuation and appraisement, shall from time to time be written into two books, and be signed and subscribed in each of the said books, by each of them, the said [B.] and [C.], within one calendar month next after the time appointed for the taking thereof respectively; that after such subscription, each of them, the said [B.] and [C.], shall be at liberty to take one of the said books into his own custody, and shall be bound and concluded by every such account respectively, unless some manifest error shall be found therein to the amount of or upwards, within the space of two calendar months then next ensuing, and be signified by the partner discovering the same, to the other of them, within the same space or time, in which case only such error shall be rectified.

That copies thereof shall be written into two books, and subscribed by B. and C., and that each of the said partners shall have one of the books.

That such accounts shall be binding, unless an error to the extent of — *l.* or upwards be discovered within two calendar months.

That after the settlement of such half-yearly accounts as aforesaid, the gains and profits shall be divided;—

THAT with all convenient speed, after the settlement of every such half-yearly account, as aforesaid, what shall appear to have been the net gains and profits of the business of the said copartnership, during the half year ending on the day hereinbefore appointed for making of such account, after deducting the weekly sums of to be taken out by the said [B.] and [C.], for their respective support or subsistence, as aforesaid, and all such charges and expenses as hereinbefore are mentioned, shall be taken out by the said partners, and be applied and disposed of as follows; (that is to say;) in the first place, in payment of so much of the principal monies and interest secured by the said hereinbefore recited bonds as aforesaid, as shall for the time being be due and payable, and the surplus or residue of the said clear gains and profits, shall be divided between the said [B.] and [C.] in equal shares and proportions; Provided always, that if at the time of any such division as aforesaid, the said [B.] and [C.], or either of them, shall be indebted to the said copartnership, the shares or share of them or him who shall be so indebted, of and in the said gains and profits, or a competent part thereof, shall be applied in or towards the discharge of their or his debts or debt with the said copartnership.

but subject to the payment of the monies for the time being payable on the said bonds,

and to the repayment of the sums in which, at the time of such division, the partners may be indebted to the copartnership.

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That if the partners lend any money to the concern, it shall be entered to their credit with the copartnership, and shall bear interest at 5*l.* per cent. per annum; and shall not be called in without six months' previous notice.

That the partner lending any money shall take back the same on receiving six months' notice to that effect from the other partner; and if he shall neglect so to do, interest thereon shall cease;

That books of account shall be kept.

That the books of account and

THAT in case either of them, the said [B.] and [C.], shall, for the convenience of the said trade or business, and with the consent of the other of them, lend or bring into the said partnership concern, any sum or sums of money, over and above his share in the capital thereof, the same shall be immediately entered in the cash book of the said copartnership, as a debt due from the concern to the partner lending the same, and shall thenceforth become a charge upon the partnership estate, and shall bear or carry interest, after the rate of 5*l.* for 100*l.* by the year; and the partner lending such sum or sums of money shall be at liberty to take such interest out of the cash of the said copartnership, by half-yearly payments, from the time or respective times of lending the same; and that the party lending shall not require the principal to be repaid, and the partner not lending shall not require the partner so lending to take back his principal, without six months' previous notice in writing for that purpose, being given by the party requiring the same to be repaid, or accepted, (as the case may be,) and if the party lending such sum or sums of money shall neglect or refuse to take back the same, upon such notice as aforesaid, interest thereon shall cease from the time of the expiration of such notice: Provided always, that during the first five years of the said copartnership, neither of the said partners shall lend or bring into the said concern, more than the sum of without the consent in writing of the said [A.] for that purpose first had and obtained.

THAT proper books of account shall be kept by the said partners, and that true, plain, and perfect entries shall be made therein of all the monies, goods, debts, and other things belonging or relating to the trade or business of the said copartnership, which shall be received, paid, sold, delivered, or contracted for, in the course of such trade or business, and of all such other matters and transactions as are usually written, and entered into books of account, kept by persons engaged in the trade or business of a [ ], together with such circumstances of names, times, and places, as may be necessary or useful for the better manifestation of the state and proceedings of the business of the said copartnership.

THAT the said books of account, together with all bonds,

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all letters and other writings relating to the business shall be kept at the place where the business is carried on; and that each partner shall have free access to the same.

bills, notes, securities, letters, and other writings, which shall from time to time concern the said copartnership, shall remain and be kept at the house and premises in which the business of the said copartnership shall, for the time being be carried on; and that each of them, the said [B.] and [C.], shall at all times have free access to examine, inspect, cast up, and copy out the same, without any hindrance or denial of or by the other of them.

That A. shall, during the first five years of copartnership, have free access to the books, &c.

THAT during the first five years of the said copartnership, the said [A.] shall also have free access to the books of account, securities, letters, and writings, of or belonging to the said copartnership, and shall and may inspect, examine, cast up, and copy out the same, without any hindrance or denial of or by the said [B.] and [C.], or either of them, and in as full and ample a manner as if he were actually a partner in the said business.

That the partners will be diligent, and carry on the business to the greatest advantage of the copartnership.

THAT each of them, the said [B.] and [C.], shall at all times during the continuance of the said copartnership, diligently and faithfully employ himself in and about the affairs and business thereof, and carry on, manage, and conduct the same, for the greatest benefit and advantage of the said copartnership.

That so far as A. shall act in the affairs of the copartnership, he will do the same.

THAT so far as the said [A.] shall think proper to act in the affairs and business of the said copartnership, he shall carry on, manage, and conduct the same to the best of his abilities, and for the greatest benefit and advantage of the said copartnership.

That all the said parties will be just, and render true and faithful accounts, &c.

THAT each and every of them, the said [A.], [B.], and [C.], shall be just and faithful to the others and other of them, in all buyings, sellings, accounts, reckonings, receipts, payments, dealings and transactions, in or about the said business of the said copartnership, and shall give and render unto the others and other of them a true and faithful account of the same, when and so often as the same shall be reasonably required.

That none of them will employ the monies, or engage the credit of the copartnership, except for the benefit thereof.

THAT none of them, the said [A.], [B.], and [C.], shall at any time employ any of the monies, goods, or effects of or belonging to the said copartnership, or engage the credit thereof, in any matter or any thing, except upon the account and for the use and benefit of the said copartnership.

That the partners shall

THAT neither of them, the said [B.] and [C.], shall at any time during the copartnership, by himself, or with or

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for any other person or persons whomsoever, be directly or indirectly engaged in any trade, manufacture, or business whatsoever, except the said copartnership business.

not engage in any other trade.

That neither of the partners shall hire or dismiss any workman or servant without the consent of the other;

THAT neither of them, the said [B.] and [C.], shall at any time during the said copartnership, without the consent of the other of them, and during the first five years of the said copartnership, without the consent of the said [A.], hire or engage any journeymen, workman, clerk, or other servant, to transact or be employed in or about the business of the said copartnership, or discharge or dismiss any such journeyman, workman, clerk, or other servant, without the like consent.

That if any of the parties shall lend the copartnership monies, or give credit to any person whom the other parties may have forbidden to be trusted, the party lending or giving credit shall pay to the copartnership the amount of the monies lent, or the value of the goods given on credit.

THAT if any of them, the said [A.], [B.], and [C.], shall at any time lend any monies belonging to the said copartnership, to any person or persons whomsoever, or sell or deliver upon trust or credit any goods belonging to the said copartnership, to any person or persons whom the others or other of them shall, by notice in writing under their or his hands or hand, previously forbid to be trusted or credited, then and in every such case, the party so lending, selling, or delivering, as aforesaid, shall immediately pay to the said copartnership, out of his own separate estate, so much money as shall be equal in amount to the monies he shall have so lent, or to the value of the goods he shall have so sold, or delivered upon trust or credit, as aforesaid.

That Messrs. and Co. shall be the bankers of the copartnership.

THAT during the first five years of the said copartnership, Messrs. [ ] and Co. shall be the bankers of the said copartnership, and afterwards, such person or persons shall be the bankers of the said copartnership, as the said [B.] and [C.] may agree upon.

That all payments on account of the copartnership not exceeding — *l.* shall be paid in cash.

THAT all payments which it shall be necessary to make, for or on account of the copartnership, not exceeding the sum of shall be paid in cash.

That all payments exceeding — *l.* shall be paid by a check on the bankers of the copartnership.

THAT all payments which it shall be necessary to make for or on account of the said copartnership, exceeding the sum of shall be made by a check or draft on the banker or bankers for the time being of the copartnership; *And* each of the said partners shall and may sign such checks or drafts with the name of the firm of the said copartnership.

That during the first five years

THAT during the first five years of the said copartnership, it shall be lawful for the said [A.] to make

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payments on account of the said copartnership, out of the monies and effects thereof, in the same manner as if he was a partner, and for that purpose to draw and sign checks or drafts on the bankers of the said copartnership, in or with the name of the firm of the said copartnership.

A. may make payments and draw checks on account of the copartnership.

That all bills of exchange shall be drawn, accepted, or indorsed in the name of the copartnership by either of the partners; but not without the consent of the other.

THAT in all cases where there shall be occasion to draw, accept, or indorse any bill or bills of exchange, for or on account of the said copartnership, such bill or bills may be drawn, accepted, or indorsed, by either of the said partners, with the name of the firm of the said copartnership; *But* neither of the said partners shall draw, accept, or indorse, any such bill or bills as aforesaid, without the consent of the other of them for that purpose, first had and obtained.

That bonds shall be executed by both partners.

THAT in all cases where there shall be occasion to give any bond or other security (except as aforesaid) for the payment of any sum or sums of money, on account of the said copartnership, such bond or other security shall be signed and executed by each of the said partners.

That bills or bonds given on account of the copartnership, otherwise than as aforesaid, shall be considered as given on the separate account of the partner giving the same.

THAT if either of them the said [B.] and [C.], shall draw, accept, or indorse, any bill or bills of exchange, on account and in or with the name of the firm of the said copartnership, without the consent of the other of them, or shall give any bond or other security on account of the said copartnership, (except as aforesaid,) which shall not be executed and signed by the other of them, every such bill, bond, or other security, shall be deemed to be given on the separate account of the partner giving the same; *And* such partner shall accordingly pay, satisfy, and discharge the same, out of his separate estate, and indemnify and save harmless the other of them and the estate and effects of the said copartnership, from and against the payment thereof, and all actions, suits, losses, and expenses, for or on account of the same.

That neither of the partners shall release debts without the consent of the other.

THAT none of them the said [A.], [B.], and [C.], shall, without the consent of the others or other of them, release or discharge any person or persons, from the debt or debts owing by him or them to the said copartnership, without receiving the full amount of such debt or debts, or accept any composition for the same, without the like consent.

Nor without the like consent, take any apprentice or

THAT neither of them the said [B.] and [C.] shall, without the consent in writing of the other of them, nor during the first five years of the said term, without the consent of the

said [A.], take any apprentice or apprentices, or covenant-servant or covenant-servants, to be employed in the said trade or business.

covenant-servant.

That if the said [B.] and [C.] shall agree to take any apprentice or apprentices, or covenant-servant or covenant-servants, the premium or premiums, or other sum or sums of money, which shall be received with and paid for such apprentice or apprentices, or servant or servants, shall be considered as part of the gains and profits of the business of the said copartnership, and shall be applied and divided accordingly.

That apprentice fees shall be considered as copartnership profits.

That the charges and expenses of keeping or maintaining such apprentices or covenant-servants as aforesaid, shall be borne and paid out of the monies and effects of the said copartnership, or by the said partners out of their respective separate estates in equal shares.

That the expenses of maintaining apprentices shall be paid by the copartnership;

That during the first five years of the said copartnership, it shall not be lawful for the said partners, without the consent of the said [A.] for that purpose first had and obtained, to take out of the copartnership monies and effects for the keeping and maintaining such apprentices and covenant-servants, more than the annual sum of 40*l.* for each such apprentice or servant.

That during the first five years not more than — *l.* shall be allowed for an apprentice without A.'s consent.

That if any of them the said [A.], [B.], and [C.], shall buy, order, or engage in any contract for any goods, or other article whatsoever, for or on account of the said copartnership, exceeding in value the sum of , without the consent in writing of the others or other of them, for that purpose first had and obtained, *Then*, and in such case, the others or other of them, shall have it in their or his option, either to receive and take such goods, or articles, for or on account of the said copartnership, or to let the same remain and be for the separate use and benefit of the party who shall so buy, order, or engage in any contract for the same, without the consent of the others or other of them, as aforesaid.

That if any of the parties shall enter into any contract on behalf of the copartnership, exceeding a given amount, without the consent of the others, the others may take or reject the contract as they think fit.

That neither of them the said [B.] and [C.] shall at any time during the copartnership, accept or draw any accommodation bill or bills, or enter into any bond, or become bound as bail, surety, or security, with or for any person or persons whomsoever, or subscribe any policy of insurance, or do or knowingly suffer to be done, any act,

That the partners shall not draw or accept accommodation bills, or become bound as bail, or do any act whereby the copart-

BETWEEN TRADERS.

deed, matter, or thing whatsoever, whereby or by means whereof, the estate and effects of the said copartnership shall or may be seized, attached, extended, or taken in execution.

nership effects may be taken in execution.

That each partner shall pay his private and separate debts, and indemnify the copartnership therefrom.

THAT each of them the said [B.] and [C.] shall from time to time duly and punctually pay and discharge the debts now due and owing, or hereafter during the copartnership to be due and owing, from him to any person or persons whomsoever, and shall at all times hereafter save, defend, keep harmless, and indemnified, the other of them, his heirs, executors, and administrators, and the stock, monies, and effects of the said copartnership, of and from his private and separate debts and engagements, and of and from all actions, suits, losses, and expenses, for or on account thereof.

That after the expiration of the copartnership term, a statement shall be made of the affairs and effects of the copartnership; and after due provision has been made for the debts due from the copartnership, the stock, &c. shall be divided between the partners in equal shares,

THAT within the space of three calendar months next after the expiration of the said copartnership term of ten years, an account in writing shall be stated and settled between the said partners, of all the stock in trade, debts, and effects, of or belonging to the said copartnership, and all the debts and engagements due and owing from or by the said copartnership; *And* upon the making up and finishing of such last mentioned account, the parties shall make provision for the payment and satisfaction of such debts and engagements as shall then appear to be due and owing from or by the said copartnership, and the balance of the said copartnership stock in trade, debts, and effects, after making such provision as aforesaid, shall be divided between the said [B.] and [C.], or their respective executors or administrators, in equal shares and proportions, and

and all necessary deeds and other instruments executed.

immediately after such division shall be made, all such instruments in writing shall be executed by and between the said parties, for facilitating the getting in of the debts and effects outstanding, and for indemnifying each other touching the premises, and for vesting the sole right and property in the respective shares of the said stock and effects in the parties to whom the same shall upon such division respectively belong, and for releasing to each other all claims and demands on account of the said copartnership, as are usual in cases of the like nature.

That if either

THAT if either of them the said [B.] and [C.], shall at

any time during the copartnership, apply to his own separate use any of the stock, monies, debts, and effects of the said copartnership, to the amount or value of or upwards, without the consent of the other of them for that purpose first had or obtained, or if the stock, monies, debts, or effects of the said copartnership or any part thereof, shall be seized, attached, or taken in execution for or on account of the private or separate debts or engagements of either of them (*a*), then and in either of the said cases it shall be lawful for the other of them, by giving notice in writing to that effect to the partner so offending in the premises, or leaving such notice at his usual place of abode, to expel such offending partner from the said copartnership; *And* if any such notice shall be so given or left as aforesaid, the said copartnership shall cease and determine from the time when the same shall be so given or left.

of the partners misapply the copartnership effects, or suffer them to be taken in execution, it shall be lawful for the other partner to expel him from the copartnership, which shall thereupon cease and determine.

THAT if either of them, the said [B.] and [C.] shall be expelled from the said copartnership under the power hereinbefore for that purpose contained, or shall depart this life during the said copartnership term of ten years, *Then* and in either of the said cases, the expelled partner, his executors or administrators, or the executors or administrators of the deceased partner (as the case may be), and the continuing or surviving partner, his executors or administrators, shall within two calendar months next after such expulsion or death, fix a value on the share of the expelled or deceased partner of and in the stock debts and effects of the said copartnership, and of and in the good will of the said trade or business for the then residue of the said copartnership term; *And* within twenty days next after the value of the share of the expelled or deceased partner shall be so fixed as aforesaid, the continuing or surviving partner, his executors or administrators, shall execute and give to the expelled partner, his executors or administrators, or the executors or administrators of the deceased partner (as the case may be), a bond, in a penalty double the principal, conditioned for the payment

That if either of the partners is expelled, or dies during the copartnership term, a value shall forthwith be fixed on the share of the expelled or deceased partner in the copartnership effects and the good-will of the business;

and the amount of such value shall be secured by the bond of the continuing or surviving partner;

(*d*) For other grounds of expulsion, see the subsequent precedents.

Expulsion.

BETWEEN TRADERS.

of such value, with interest after the rate of 5*l.* for 100*l.* by the year, to be computed from the expulsion of the expelled partner, or from the decease of the deceased partner (as the case may be), in manner following, (that is to say,) one equal third part of such value, at the expiration of four calendar months after such expulsion or death, another third part thereof at the expiration of eight calendar months after such expulsion or death, and the other and remaining one third part thereof at the expiration of twelve calendar months after such expulsion or death, and the interest of the said value or of so much thereof as shall for the time being remain unpaid, to be paid at the expiration of every four successive calendar months after such expulsion or death; *And* the continuing or surviving partner, his executors or administrators, shall also, within twenty days next after such value shall be so fixed as aforesaid, execute and give to the expelled partner, his executors or administrators, or to the executors or administrators of the deceased partner (as the case may be), another bond, in a sufficient and reasonable penalty, for idemnifying him or them, and the estates and effects of the expelled or deceased partner (as the case may be), from and against the debts and engagements due and owing from or to be performed by the said copartnership at the time of such expulsion or death, and from and against all actions, suits, damages and expenses in respect thereof; *And* the expelled partner, his executors or administrators, or the executors and administrators of the deceased partner (as the case may be), shall within the said twenty days release and assign to the continuing or surviving partner, his executors and administrators, *All* his or their share, right, title and interest, of, in, and to the stock, monies, debts and effects belonging or due and owing to the said copartnership, and as far as possible enable him and them to recover and receive the same.

payable by three equal instalments, at four, eight, and twelve calendar months after such expulsion or death;

and the continuing or surviving partner shall also give a bond to the expelled partner, or the executors of the deceased partner, for indemnifying him or them against the copartnership debts;

and thereupon the expelled partner, or the executors of the deceased partner, shall execute proper releases and assignments to the continuing or surviving partner.

Arbitration clause.

THAT if at any time during the continuance of the said copartnership, or after the end thereof, any dispute or controversy shall arise between the said parties hereto, or any of them, or between any one or more of them, and the executors or administrators of the others or other of them, or between their respective executors or administrators, touching or concerning the construction of these presents, or any of

the clauses, covenants, and agreements herein contained, or any valuation to be made as aforesaid, or any other matter or thing whatsoever, in any wise relating to the said copartnership, the same shall be referred to the arbitration of such two persons as shall be nominated or appointed for that purpose by the parties in difference, one of the arbitrators to be named by one of the parties in difference, and the other of them by the other of the said parties in difference, within thirty days next after any such dispute or controversy shall so happen; *And* in case such two persons shall not agree in the premises within the space of thirty days next after any such dispute or controversy shall be referred to them, the same shall be referred to the determination of such indifferent person as the said arbitrators, by any writing under their hands, shall nominate and appoint as umpire in the premises; *And* the award of such arbitrators, if made in writing, under their hands and seals, to be delivered to the parties in difference within the time hereinbefore limited, or in default thereof, the award of such umpire, under his hand and seal, to be delivered to the parties in difference within thirty days after he shall be so appointed, shall be binding and conclusive on all the said parties; *And* that in case either of the parties in difference shall neglect, or refuse, by the space of one calendar month, after notice in writing given by either party for that purpose, to join in the appointment of such arbitrators as aforesaid, it shall be lawful for the abitrator to be chosen by the party giving such notice, to make an award, which shall be binding in like manner as if the party so neglecting or refusing had chosen an arbitrator who had actually joined therein; *And* lastly, that for the further and better enforcing the performance and observance of every such award so to be made as aforesaid, the reference or submission for or in respect of the same, shall from time to time be made a rule of the Court of King's Bench, according to the direction of the statute in that case made and provided. IN WITNESS, &c.

BETWEEN PATENTEES.

DEED *of* COPARTNERSHIP *between* PATENTEES, *where the Partner who took out the Patent sold a Moiety of it to a Capitalist, who agreed to advance the greater part of the Capital necessary to work the Patent, and to become a Dormant Partner.*

Parties.

THIS INDENTURE, made the day of BETWEEN [A.] of &c. of the one part, and [B.] of &c. of the other part.

Recital that A. is entitled to a patent;

WHEREAS the said [A.] hath lately obtained his Majesty's royal letters patent, bearing date the day of , for the sole and exclusive use, benefit, and advantage, for and during the term of fourteen years, to be computed from the day of the date of the said letters patent, of certain inventions and improvements lately made and discovered by the said [A.] in manufacturing machinery for the manufacture of (*a*).

that he has

AND WHEREAS

(*a*) The following is a more formal, and correct recital of letters patent:

Recital of a patent.

"WHEREAS his most excellent majesty King George the Fourth, by his letters patent under the great seal of *Great Britain* *, bearing date on or about the day of , did give and grant unto the said [A.], his executors, administrators, and assigns, full power, sole privilege, and authority, to make, use, exercise, and vend the therein recited invention of the said [A.], of certain improvements in , within that part of the united kingdom of Great Britain and Ireland, called England †, the dominion of Wales, and the town of Berwick-upon-Tweed ‡, for the term of fourteen years, from the day

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* If the letters patent recited are for Ireland or Scotland, say, "under the great seal for '*Ireland*,' or '*Scotland*,'"

† In case it is a patent for Ireland or Scotland, that is recited, say, "within that part of the united kingdom of *Great Britain* and *Ireland*, called '*Ireland*,' or '*Scotland*.'"

‡ If the patent right is made to extend to the colonies, add, "and also within all his Majesty's colonies and plantations abroad,"

BETWEEN PATENTEES.

the said [A.] hath contracted with the said [B.] for the sale to him of one undivided moiety or equal half part or share of and in the said letters patent, and all profit, benefit, and advantage, to arise or be derived from the manufacturing, vending, and using machinery made according to the said patent, and of licencing other persons to manufacture, vend, and use such machinery, at or for the price or sum of pounds, *It being at the same time agreed*, that the said [A.] and [B.] should forthwith become copartners in the trade or business of manufacturing machinery according to the said letters patent, and of manufacturing by means of such machinery, upon the terms, and under and subject to the covenants, conditions, stipulations, and agreements, hereinafter mentioned and contained. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [B.] to the said [A.] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt, &c.) *He* the said [A.], *Hath* granted, bargained, sold, assigned, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, and set over unto the said [B.], his executors, administrators, and assigns, *All that* one undivided moiety or equal half part or share (the whole into two equal half parts or shares being considered as divided) of and in *All those* the said letters patent hereinbefore mentioned to have been obtained by the said [A.] for certain inventions and improvements in manufacturing machinery for the manufacture of as aforesaid, and of and in all profits, benefits, and advantages whatsoever, to be made, had, or obtained by virtue thereof, in manufacturing, vending, and using machinery accord-

agreed to sell a moiety of it to B. for —*l.*

B. agreeing to become a partner with A. in working the patent, as after mentioned.

First witnessing part.

A. assigns to B.

a moiety of the said patent,

and of all profits and advantages to be made or arise therefrom,

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of the date of the said letters patent, but subject to the usual provisoes for making void the said letters patent, in case a specification of the invention therein recited should not be duly enrolled within six months from the date thereof, or the said letters patent, or the beneficial interest therein, should at any time thereafter be assigned to or otherwise become vested in more than five persons."

BETWEEN PATENTEES.

Habendum.

ing to the said patent, and licencing other persons so to do, or otherwise howsoever. TO HAVE AND TO HOLD the said undivided moiety or equal half part or share hereby assigned, or intended so to be, of and in the letters patent, invention, profits, and advantages hereinbefore mentioned, unto the said [B.], his executors, administrators, and assigns, in as full, ample, and beneficial a manner, as the said [A.] could or might have held the same, if these presents had not been made and executed (*b*).

Second witnessing part.

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the mutual trust and confidence which the said [A.] and [B.] have and repose in each other, *Each* of them the said [A.] and [B.], *Doth* hereby for himself,

Each of the partners covenants with the other,

(*b*) It is generally best to assign the patent by a separate instrument. This assignment may be recited in the copartnership deed, if executed at the time of the execution of the copartnership deed; or it may be provided in the copartnership deed, that an assignment of the patent shall be executed forthwith. If the assignment is recited, the following form may be used:

Recital of an assignment of a patent to a trustee for the copartnership.

"AND WHEREAS by an indenture of assignment, bearing even date with these presents, and made, or expressed to be made, between the said [A.] of the first part; the said [B.] of the second part; and [*trustee*] of the third part; the said hereinbefore recited letters patent, and all profits, benefits, and advantages to be had, made, obtained, or derived from the same, have (for the nominal consideration in the said indenture mentioned) been assigned by the said [A.], with the privity and consent of the said [B.], unto the said [*trustee*], his executors, administrators, and assigns, absolutely: *But In Trust nevertheless* for the said [A.] and [B.], their executors, administrators, and assigns, as part of the capital of the copartnership therein mentioned, meaning thereby the copartnership formed by these presents, and to assign or otherwise dispose of the same, as the said [A.] and [B.], their respective executors, administrators, or assigns, shall order or direct."

For a form of conveyance of freeholds, to a trustee for partners, on a purchase, see Index, PURCHASE DEEDS.

his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the other of them, his executors and administrators, in manner following; (that is to say;) BETWEEN PATENTEES.

THAT they the said [A.] and [B.] shall and will be and continue copartners in the trade or business of manufacturing machinery for the manufacture of , according to the hereinbefore recited letters patent, or any letters patent to be taken out and obtained as hereinafter is mentioned, and of manufacturing by means of such patent machinery, and in all matters and things relating to or arising from the said letters patent, for and during the term of fourteen years, to be computed from the day of now last past, and thence next ensuing, and fully to be complete and ended, if both of them the said [A.] and [B.] shall so long live, under and subject to the covenants, conditions, stipulations, and agreements hereinafter mentioned and contained. that they will be partners in the manufacture of the patent machinery, for 14 years, upon the terms after mentioned,

THAT the firm or style of the copartnership shall be, "[A.] and Co." (*c*) that the firm shall be A. & Co.

THAT the said copartnership trade or business shall be carried on, at or in the messuages, shops, workrooms, and warehouses of the said [A.] situate at , and at or in such other premises as the said partners shall hereafter mutually agree upon. That the business shall be carried on at

THAT the capital or joint stock of the said copartnership shall consist of the sum of pounds, already brought into the said business by the said [B.], and of all such sum and sums of money as shall or may, at any time hereafter, be brought into the said copartnership business, for the purpose of carrying on the same, as hereinafter is mentioned, and also of the messuages, shops, workrooms, and warehouses, now belonging to the said [A.], situate at aforesaid, and of the said hereinbefore recited letters patent of the day of , and of all other letters patent which shall or may, at any time hereafter, That the capital shall consist of — *l.* brought in by [B.]; of such sums as may hereafter be brought in; of the shops, workrooms and warehouses, now belonging to A;— and of the letters patent.

(*c*) Or,

"THAT the trade or business of the said copartnership, shall be carried on under the firm or style of 'A. & Co.'"

BETWEEN PATENTEES.

during the said copartnership, be taken out or obtained by the said [A.], for any improvements or inventions hereafter to be made or discovered by him the said [A.], relating to the manufacture of machinery for the manufacture of , or to the manufacture of (*d*).

That B. shall bring into the business such further sums as A. shall direct,

THAT the said [B.] shall, from time to time, and at all times during the said copartnership, at the request in writing of the said [A.] bring into the said copartnership

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(*d*) When it is intended that the partners shall increase the capital as the major part of the partners shall direct, and that a partner refusing to bring in his share shall be expelled, the following clauses may be used:

That the capital shall consist of such sum as the major part of the partners shall agree upon.

THAT the capital or joint stock of the said copartnership shall consist of the sum of pounds, or such other sum or sums of money as the said partners, or the major part of them, shall hereafter agree upon, and shall be brought in by the partners in equal proportions.

That if any partner shall neglect to bring in his share, he shall be considered as indebted to the extent of the sum he ought to bring in, and such debt shall carry interest;

THAT if any one or more of the partners shall at any time neglect or refuse to bring in his or their share or shares of the said capital of the said copartnership, at the time he or they ought to bring in the same, the amount of such share or shares, or such part thereof as shall not be brought in, shall be placed to the debit of the account of such partner or partners with the said copartnership, and shall carry interest at the rate of 4*l.* for 100*l.* by the year.

That if he does not bring in his share on three months' notice, the other partners may expel him.

THAT if any one or more of the said partners shall at any time neglect or refuse, for the space of three calendar months, after being thereunto requested in writing by the others of the partners for the time being, or the major part of them, to bring in his or their share or shares of the said capital of the said copartnership, it shall be lawful for the others of the said partners, or the major part of them, to expel the partner or partners so for the time being offending in the premises from the said copartnership, in like manner, and upon the like terms, as hereinafter is mentioned, with respect to the expulsion of a partner in any of the events hereinafter in that behalf mentioned.

BETWEEN PATENTEES.

business, for the purpose of carrying on the same, and as part of the capital or joint stock thereof, all such sum and sums of money as may, for the time being, be necessary for the purposes of the said business, not exceeding in the whole, with the said sum of pounds, already brought into the said business by the said [B.] as aforesaid, the sum of pounds.

not exceeding with the sum of —*l.* already brought in, the sum of —*l.*

That after B. has brought in such sums as aforesaid, A. shall bring in such sums as B. shall require, not exceeding, with the value of the messuages, warehouses, &c. belonging to A. the sum of —*l.*

THAT the said [A.] shall, from time to time, at the request in writing of the said [B.] bring into the said copartnership business, for the purpose of carrying on the same, and as part of the capital or joint stock thereof, all such sum and sums of money as may, for the time being, be necessary for the purposes of the said business, not exceeding in the whole, with the value of the said messuages, shops, workrooms, and warehouses, to be valued as hereinafter is mentioned, the sum of pounds, but the said [A.] shall not be obliged to bring any sum of money into the said copartnership business, until the said [B.] shall have brought in the whole of the sum agreed to be brought by him as aforesaid.

That the messuages, warehouses, &c. belonging to A. shall be valued by arbitrators or umpire;

THAT the said messuages, shops, workrooms, and warehouses, now belonging to the said [A.] situate at aforesaid, shall, within two calendar months from the day of the date of these presents, be valued by two indifferent and competent persons, one to be chosen by the said [A.] and the other by the said [B.], within one calendar month from the day of the date of these presents; or, in case such two indifferent persons shall disagree, then, by a third indifferent and competent person, to be chosen by the said two persons so first chosen as aforesaid, and the sum at which the said messuages, shops, workrooms, and warehouses, shall be so valued as aforesaid, shall be considered as the value thereof, and the said premises shall be entered in the books of the said copartnership as of that value, and the sum at which the said premises shall be so valued shall be considered as so much money brought into the said business by the said [A.], as part of the capital thereof, and shall be carried to the credit of his account with the said copartnership accordingly.

and the sum at which the same shall be valued, shall be considered as so much money brought in by A.

That after the messuages, warehouses,

THAT at any time after the said messuages, shops, workrooms and warehouses, shall be so valued as aforesaid,

BETWEEN PATENTEES.

&c. shall have been valued, the same shall be conveyed in trust for the copartnership.

the said [A.] shall and will, upon the request in writing of the said [B.], but at the expense of the said copartnership, convey and assure the same premises to two persons, (one to be be chosen by the said [A.] and the other by the said [B.],) In trust for the said copartnership.

That the aforesaid letters patent shall be considered as of the value of —*l.*

That THE said hereinbefore mentioned letters patent shall be considered as of the value of pounds, and shall be entered as of such value in the books of the said copartnership.

That the letters patent to be obtained as after mentioned, shall be considered as of the value of the sums expended in obtaining them.

That THE letters patent which shall hereafter be taken out and obtained by the said [B.], as hereinafter is mentioned, (if any) shall be considered as of the value of such sum or sums of money as shall have been paid or expended in taking out or obtaining the same, and shall be entered as of such value in the books of the said copartnership.

That the sums at which the patents shall be valued, shall be considered as so much money brought into the business, and a moiety of such sums shall be carried to the credit of each partner's account with the copartnership.

That THE sum at which the hereinbefore mentioned letters patent have been agreed to be valued as aforesaid, and the sum or sums at which any future letters patent to be taken out and obtained by the said [A.], have been also agreed to be valued, as hereinbefore is mentioned, shall be considered as so much money brought into the business by the said [A.] and [B.], as part of the capital thereof, and that the same shall be considered as brought in by them in equal shares, and a moiety of such sum or sums shall be carried to the credit of their respective separate accounts with the said copartnership accordingly.

That A. shall assign to B. a moiety of all future patents obtained by A.

That THE said [A.] shall, at the request and expense of the said [B.], his executors or administrators, assign and make over to him or them, for his or their own absolute use and benefit, one undivided moiety, or equal half part or share of and in all such letters patent (if any) as shall hereafter be taken out and obtained by the said [A.], as hereinafter mentioned.

That interest at 5*l.* per cent shall be paid on the capital; and may be taken out of the monies of the copartnership half-yearly.

That THE said [A.] and [B.] shall be entitled to interest after the rate of 5*l.* for 100*l.* on the amount of their respective shares for the time being in the capital of the said copartnership, and shall and may, on the day of and the day of in each year of the said copartnership, take and retain such interest from and out of the monies and effects of the said copartnership.

That the capi-

That THE said capital or joint stock of the said copart-

nership and the increase thereof, and the gains and profits arising therefrom, shall (subject as hereinafter is mentioned) be used and employed in the business of the said copartnership.

tal and the profits shall be employed in the business, except as after mentioned.

THAT during such time as the said copartnership business shall be carried on at the said messuages, shops, workrooms, and warehouses, hereinbefore mentioned, the said [A.] and his family shall and may reside in and occupy the said messuage or dwelling house now occupied by the said [A.] and his family, the said [A.] paying to the said copartnership, as and by way of rent for the same, the yearly sum of pounds, such rent to include all rates, taxes, and other outgoings, payable for or in respect of the same premises.

That while the business is carried on at , A. and his family may occupy the messuage now occupied by him and them, the said A. paying for the use thereof a yearly rent of —*l.* free of all taxes, &c.

THAT the said [B.] shall pay out of his own proper monies, unto the said [A.], during the continuance of the said copartnership, for his care, pains, and trouble, in managing and carrying on the business of the said copartnership, the yearly sum of pounds, by two equal portions, on the day of , and the day of in each year, and so in proportion for a less time than half a year (*e*).

That B. shall pay to A. out of his own monies, for A.'s care in managing the business, the yearly sum of — *l.*

(*e*) In a copartnership deed, where it was agreed that the acting partner should have a salary for his trouble, out of the profits, and to be varied in proportion to the profits, the following clauses were inserted:

THAT the said [A.] shall receive out of the clear gains and profits of the said copartnership business, for his care, pains and trouble in managing and carrying on the business thereof, the yearly salary or sum hereinafter mentioned (that is to say); In each year in which the clear gains and profits of the said copartnership business shall not exceed the sum of pounds, a salary or sum equal in amount to pounds for every 100*l.* of such gains and profits; In each year in which the clear gains and profits of the said copartnership business shall exceed the sum of pounds, and shall not exceed the sum of pounds, a salary or sum equal in amount to pounds for every 100*l.* of such gains and profits; *And* in each year

That A. shall receive out of the profits of the copartnership business such salary as after mentioned, *i. e.* when the yearly profits shall not exceed — *l.* a salary equal to — *l.* per cent on the profits; when they shall exceed the sum of — *l.* and not amount to the sum of —*l.*, a salary equal to — *l.* per cent. on the profits;

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That the rent and taxes payable for copartnership premises, the expenses of repairs, and insurance against fire, the maintenance and wages of clerks and servants, and all losses of the copartnership business, to be paid out of the profits of the copartnership; or, if the same be defi-

THAT the rates, taxes, and other outgoings, payable for or in respect of the said messuages, shops, workrooms, and warehouses, hereinbefore mentioned, and the rents and taxes, and other outgoings, payable for or in respect of any other messuages or tenements, shops, workrooms, warehouses, and premises, at or in which the said copartnership business shall hereafter be carried on, and the expenses of repairing the said premises, and all sums which may be required for keeping the same, and the stock and effects for the time being belonging to the said copartnership, insured against loss or damage by fire, and the wages and maintenance of all clerks, servants, and other persons to be employed in the said business, during

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and when they should amount to or exceed the sum of — *l.* then a salary of — *l.*

in which the said clear gains and profits of the said copartnership business shall amount to, or exceed, the sum of pounds, a salary or sum of pounds.

That A. may take out of the copartnership monies in respect of his salary, the yearly sum of — *l.*, by quarterly portions.

THAT it shall be lawful for the said [A.] to take out of the monies for the time being belonging to the said copartnership, for his own separate and private use, in respect of the salary or sum to which he shall be so entitled as aforesaid, the yearly sum of pounds, by four equal quarterly payments, on the day of , the day of , the day of , and the day of , in every year.

That if the sum so taken out shall exceed the salary for the current year, the excess shall be placed to his debit, and carry interest;

THAT if at the expiration of any year, during the continuance of the said copartnership, it shall appear that the yearly sum of pounds, so allowed to be taken out by the said [A.] as aforesaid, shall exceed in amount the salary or sum to which he shall be entitled in respect of the clear gains and profits of the said copartnership business during the past year, the excess of the said yearly sum of pounds over such salary or sum as aforesaid shall be placed to the debit of the account of the said [A.] with the said copartnership, and shall carry interest at the rate of 4*l.* for 100*l.* by the year, until repaid, and shall (if the other partners require it), be deducted out of the share of the said [A.] in the gains and profits of the said copartnership business, upon the next division of such gains and profits as hereinafter mentioned.

and (if required) shall be repaid on the next division of profits.

the said copartnership, and all expenses, losses, and damages, which, during the said copartnership, shall be incurred or sustained in carrying on the same, or in any wise relating thereto, and also the interest on the capital of the said copartnership, shall be borne and paid by and out of the gains and profits of the business of the said copartnership; or, in case the same shall be deficient, then by the said [A.] and [B.] in equal shares and proportions.

cient, by the partners in equal shares.

That the net gains and profits arising from the said business of the said copartnership, after deducting the said interest on the said capital, and all such other charges and expenses as hereinbefore mentioned, shall belong to the said [A.] and [B.], in equal shares and proportions.

That the profits of the business shall be divided equally.

That if either of the said partners shall bring into the said copartnership business, any sum of money, by way of loan, the same shall carry interest, and shall not be withdrawn or paid back, without six months' notice; And that if the same be not withdrawn on such notice, interest thereon shall cease at the expiration of the notice. See ante, p. 121.

That if any money is brought in as a *loan*, the same shall carry interest, and shall not be withdrawn or paid back without 6 months' notice.

That [*A.*] *shall devote the whole of his time to the business of the copartnership, and diligently employ himself therein; And that* [*B.*] *shall not be obliged to devote more of his time to the business than he shall think fit.* See ante, p. 122.

That A. shall diligently employ himself in the business, but B. need not act further than he thinks fit.

That the said [A]. shall and will, from time to time, and at all times hereafter, during the continuance of the said copartnership, disclose or make known to the said [B.] all such inventions or improvements, as he the said [A.] shall discover or make in or about the manufacture of machinery for the manufacture of or in, or about the manufacture of , while attending to the business of the said copartnership, or otherwise howsoever; *And* shall not nor will disclose or make known the said inventions or improvements to any other person or persons whomsoever; *And* that if the said [A.] shall at any time infringe or act contrary to this present covenant or agreement, he the said [A.] shall and will pay to the said [B.], his executors or administrators, the sum of pounds as or by way of stated and liquidated damages §.

That A. shall disclose to B. all such inventions and improvements as he may discover in relation to the machinery used in the manufacture of

and will not disclose the same to any other person:

and that if he shall break this covenant, he shall pay to B. the sum of — *l.* as stated damages.

§ See *ante*, page 115—116.

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That future letters patent shall be applied for and taken out in the name of A.

THAT if the said [B.] shall be desirous that letters patent should be obtained for the exclusive use and advantage of any inventions or improvements which shall be so discovered or made by the said [A.], as aforesaid, such letters patent shall be applied for and taken out in the name of the said [A.] (*f*).

That the expenses of obtaining the patents shall be paid out of the monies of the copartnership.

THAT the expenses of soliciting and obtaining letters patent for the discovery of any such inventions or improvements of the said [A.], as hereinbefore mentioned, and the expenses of all experiments which shall be made by the said [A.] with reference to such inventions or improvements, shall be deemed part of the expenses of the said copartnership business, and be paid out of the monies and effects of or belonging to the same.

That the price of the machines shall be fixed by both partners.

THAT the machines which shall be manufactured by or on account of the said copartnership, shall be sold for such price or prices as the said partners shall from time to time mutually agree upon.

That B. may appoint an agent to see into the affairs of the copartnership.

THAT it shall be lawful for the said [B.] from time to time and at all times during the said copartnership, by any writing under his hand, to appoint one or two person or persons to look into, see, and examine the state and condition of the affairs and concerns of the said copartnership, and the accounts thereof, and the way and manner in which the same is managed and carried on, with the view and for the purpose of reporting the same to him the said [B.]; *And* that the person or persons so appointed, shall at all times have full and free liberty to enter into and

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(*f*) In most cases, the following clause should be added in this place. The above precedent contains a clause to the like effect, in a former part of it. See *ante*, page 136.

That future patents, when obtained, shall be assigned *In* trust for the copartnership.

"AND in case any such letters patent as aforesaid shall be obtained, the same shall immediately thereafter be assigned and made over to such person or persons, and in such manner as the said partners, or the major part of them, shall order or direct, *In* trust for the said copartnership; *And* the same shall thenceforth be considered as part of the capital of the said copartnership, and shall belong to the said partners, in the like shares and proportions."

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upon the premises where the said copartnership business shall for the time being be carried on, and every part thereof, and to inspect and examine the books and accounts of the said copartnership, and to make copies or extracts of or from the same.

That no clerk or servant shall be employed against the consent of either partner.

That it shall be lawful for each partner to dismiss the clerks and servants;

And that no dismissed clerk or servant shall be re-engaged without the consent of the partner dismissing him.

THAT no clerk, servant, workman, or other person, who shall be employed in or about the affairs or business of the said copartnership, shall be continued to be employed therein against the consent of either of the said partners: *And* that it shall be lawful for each of the said partners alone, and of his own proper authority, to dismiss such of the said clerks, workmen, and other persons so to be employed in the said business as aforesaid, as he shall think proper: *And* no clerk, workman, or other person, who shall be so dismissed, shall be re-engaged or re-employed in the said copartnership business, without the consent in writing of the partner dismissing such clerk, servant, workman, or other person, for that purpose first had and obtained (*g*).

That the partners will be just, and render faithful accounts.

That each of the partners will be just in all transactions, &c. and render to the other of them faithful accounts, when required. See *ante*, 122.

That the partners shall keep proper books of account.

THAT the said partners shall provide and keep, or cause to be kept, such and so many books as shall be necessary, wherein shall be fairly entered and written the just and true particulars of all monies paid and received, and of all goods, wares, and merchandizes, which shall be manufactured from time to time during the said copartnership, and the price or prices at which the same were sold and delivered out, and of all debts contracted on account of the

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(*g*) Another form:

"THAT it shall be lawful for the said [A.] to employ such clerks, servants, and workmen, in or about the affairs or business of the said copartnership, as he shall think fit, but no such clerk, servant, or workman, shall be continued to be employed therein against the consent of the major part of the partners for the time being, or shall be hired to be employed therein for a longer period than three months at one time, without the like consent."

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said copartnership, and of all other matters, transactions, and things, in any wise necessary or conducive to the manifesting of the state of the affairs and concerns of the said copartnership (*h*).

That such books, and all letters and securities, shall be kept at the countinghouse.

That the books, and all letters, securities, and writings relating to the business, shall be kept at the counting-house; And that each partner shall have access to the same. See *ante*, p. 122.

That yearly accounts shall be made out and settled:

THAT on the day of now next ensuing, and on the day of in every succeeding year during the said copartnership, or within one calendar month afterwards, the said [A.] and [B.] (unless hindered or prevented by sickness, or other inevitable accident) shall account together, and make and cast up, and fully state and adjust between them, a true, plain, perfect, and particular account and reckoning in writing of, for, and concerning their joint stock in trade, and all monies, wares, and merchandizes, goods, debts, and effects, then being due and owing for or on account of the said copartnership, and so and in such manner as it may thereby plainly appear what the state of the said joint trade or business is, and how the affairs do then stand; *And* shall thereupon cause the true particulars of every such yearly account, and the rest and balance thereof, to be fairly written and entered in two several books to be for that purpose provided, and shall subscribe their several names in each of the same books, at the foot of the said accounts to be entered therein as aforesaid, and when the names shall be so subscribed and set, each of the said partners shall have and take one of the said books into his own custody and to his own use; which accounts when stated and settled as aforesaid, shall not be called in question by any person or persons whomsoever, unless some error shall be discovered therein, to the amount of pounds or upwards, within the space of three months next after such accounts shall have been so settled and signed as aforesaid, and signified by one of the said parties to the other of them, within the same space of time.

That the same shall be entered into two books of account, and signed by both partners;

and shall be binding on all persons, unless some error to the extent of —— *l.* shall be found therein within three months.

(*h*) For another form, see *ante*, p. 121.

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That with all convenient speed after the yearly accounts are made up, the profits shall be taken out and divided.

THAT with all convenient speed after the settlement of every such yearly account, what shall appear to be the net gains and profits of the business of the said copartnership during the year ending on the day hereinbefore appointed for the taking of such account, (after making such deductions as are hereinbefore mentioned,) shall be taken out by, and divided between, the said [A.] and [B.], in equal shares and proportions.

That Messrs. and Co. shall be the bankers of the copartnership, and all monies received on account of the copartnership shall be paid into their banking house, or into the banking house of their agents in London.

THAT Messrs. and Company, of aforesaid, shall be the bankers of the said copartnership, and all monies which shall be received by the said [A.] and [B.] in respect of the said copartnership business, or so much thereof as shall not be wanted for answering current expenses, shall with all convenient speed after the same shall be received, be paid into the banking-house of the said Messrs. and Company, or into the banking-house of their agents in London, to the account of the said copartnership.

That all payments on account of the copartnership, under — *l.* shall be paid out of the copartnership monies by either partner.

THAT all payments which it shall be necessary to make by or on behalf of the said copartnership, not exceeding, as to each payment, the sum of *l.* shall or may be made by either of the said partners, by and out of the copartnership money for the time being in his hands or custody.

That all payments above that sum shall be paid by bills or drafts on the bankers, or their agents.

THAT all payments, which it shall be necessary to make by or on behalf of the said copartnership, exceeding as to each payment the sum of *l.*, shall or may be made by either of the said partners by a bill of exchange, or draft, or check, drawn upon the bankers of the said copartnership, or their agents in London, and signed in the name or with the firm of the copartnership.

That no bill, note, or other security (except drafts), shall be given in the name of the copartnership by one partner, without the consent of the other.

THAT no bill of exchange, promissory note, or other security (except drafts or checks upon the bankers of the said copartnership, or their agents, to be signed as aforesaid), shall be drawn, accepted, or endorsed in the name, or with the firm of the copartnership, by either of the said partners, without the consent of the other of them, for that purpose first had and obtained.

That if any bill, note, or security shall be given without such consent,

THAT if either of the said partners shall draw, accept, or endorse any bill, note, or other security in the name, or with the firm of the said copartnership, without the consent of the other of them for that purpose first had and

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obtained, every such bill, note, or other security, shall be deemed to be given on the separate account of the partner drawing, accepting, or endorsing the same, and he shall accordingly pay, satisfy, and discharge the same out of his separate estate, and shall indemnify and save harmless the other of them, his heirs, executors, and administrators, and his and their estates and effects, from and against the payment thereof, and all actions, suits, costs, damages, and expenses, on account thereof.

the same shall be considered as given on the separate account of the partner giving the same, and he shall pay the same out of his separate estate accordingly.

That if either of the partners shall lend any monies, or deliver any goods on credit against the consent of the other, he shall pay to the copartnership the amount or value thereof.

That if either of the partners shall lend any of the monies of the copartnership without the other's consent, or deliver upon credit any of the goods of the copartnership to any person, whom the other of them shall have forbidden him to trust, the party so lending or delivering upon credit shall immediately pay to the said copartnership a sum, equal in amount to the money so lent, or to the value of the goods so delivered upon credit. See ante, p. 123.

That if either of the partners shall buy any goods beyond the value of — *l.* without the consent of the other, the other partner may take or reject them.

That if either of the said partners shall buy any goods, &c., on account of the copartnership, exceeding in value the sum of l. without the consent in writing of the other of them, the other partner shall have the option of taking such goods, &c. on account of the copartnership, or leaving the same for the separate profit or loss of the partner buying the same. See ante, p. 125.

That neither of the partners shall become bound or bail, &c. without consent.

That neither of the partners shall be bound, or become bail or surety for any person, without the consent of the other of them, or do any act, whereby the copartnership effects shall or may be seized or taken in execution. See ante, p. 125.

That the partners will pay their separate debts, and indemnify the copartnership therefrom.

That each of the said partners will punctually pay his separate and private debts, and indemnify the copartnership effects from all claims on account thereof. See ante, p. 126.

That either of the partners may determine the copartnership on giving to the other, 12 months' previous notice to that effect:

THAT if either of the said partners shall be minded and desirous to put an end to this copartnership, at any time during the continuance thereof, he shall be at liberty so to do, on giving twelve calendar months' previous notice in writing of such his intention, to the other of them, or leaving the same at his usual place of abode; *And* in case either of the said partners shall give or leave any such notice as aforesaid, the said copartnership shall be con-

sidered as dissolved, and at an end to all intents and purposes whatsoever, at the expiration of twelve calendar months from the time when such notice shall be so given or left as aforesaid, and the signature of the said partner so giving such notice shall alone be a sufficient authority to the printer of the London Gazette for the insertion therein of any notice purporting to be a dissolution of the said copartnership, and it shall be lawful for the partner giving such notice to sign the notice of dissolution, in or with the name of the other partner.

may insert a notice of the dissolution in the London Gazette.

That within the space of two calendar months next after the expiration or sooner determination of the said copartnership (except in the case of the same being determined by the death of either of the said partners), an account in writing shall be made and taken by the said partners, of all the stock in trade, debts and effects, of or belonging and due and owing from or by the said copartnership; *And* upon the finishing of such account, due provision shall be made for the payment and satisfaction of such debts and engagements as shall then appear to be due and owing from the said copartnership, and also for the repayment to the said partners of their respective shares in the capital of the said copartnership, and the balance (if any) of the said copartnership stock and effects, and the gains and profits thereof, and other the matters to be included in such account, shall, after making such provision as aforesaid, be divided between the said partners, or their respective executors or administrators, in equal shares; *And* after making such division, such instruments in writing shall be executed by the said parties respectively, for facilitating the getting in of the debts and effects outstanding, and for indemnifying each other touching the premises, and for vesting the sole right and property in the said respective shares of and in the said stock and effects, in the parties to whom the same respectively shall, upon such division, belong, and for releasing to each other all claims on account of the said copartnership, as are usual in cases of the like nature.

That on the determination of the copartnership the affairs shall be wound up and settled;

and after payment of the debts due from the copartnership, the stock and effects shall be divided equally;

and proper releases and other instruments shall be executed.

That upon the expiration or sooner determination of the said copartnership, save and except in the event hereinbefore mentioned, each of them, the said [A.] and [B.],

That upon the expiration of the partnership (except by the

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death of one of the partners), each of the partners shall be entitled to a moiety of the patents then forming part of the capital of the copartnership.

shall retain, in part satisfaction of his share in the capital of the said copartnership, one moiety or half part of the patent or patents then forming part of the said capital, and shall join in, make, do, and execute, all such grants, assignments, and other acts and deeds as shall be necessary for enabling each of them, the said [A.] and [B.], and his respective executors and administrators, to make, use, and vend machinery and , according to the same patent or patents, for his and their exclusive use and benefit, for the then residue of the term or terms of years for which such patent or patents shall have been granted.

That if either of the partners shall die during the copartnership, and the survivor shall within 10 days give to the executors or administrators of the deceased partner, notice of his intention to purchase the share of the deceased partner in the capital and effects of the copartnership, the said share shall be valued;

THAT if either of them, the said [A.] and [B.], shall happen to depart this life during the said copartnership term of fourteen years, and the surviving partner shall, within ten days after the decease of the deceased partner shall be known to him, give to the executors or administrators of the deceased partner notice in writing of his intention to purchase the share of the deceased partner, of and in the said copartnership stock in trade, debts, monies and effects, or leave such notice at the place of abode of the deceased partner at the time of his death; *Then*, and in such case, the surviving partner, his executors or administrators, and the executors or administrators of the deceased partner, shall within two calendar months next after such writing shall be so given or left as aforesaid, fix a value on the share of the deceased partner of and in the stock in trade, monies, debts and effects of or belonging to the said copartnership, at the time of the decease of the deceased partner, including therein the patent or patents then forming part of the said capital of the said copartnership; *And* within twenty days after the value of the share of the deceased partner shall be so fixed as aforesaid, the surviving partner, his executors or administrators, shall pay to the executors or administrators of the deceased partner, a sum equal to one third part or share of the sum, at which the share of the deceased partner shall be so valued as aforesaid, and shall execute and give to the executors or administrators of the deceased partner a bond, in a penalty double the principal, conditioned for the payment of a sum equal to the other two-third parts or shares of such value, with interest for the same, after the rate of 5*l.* for every 100*l.*

and that within 20 days after the value of such share shall be so fixed, the surviving partner shall pay down one-third of such value, and give a bond for the payment of the other two-thirds with interest, as follows: (*i. e.*)

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by the year, to be computed from the day of the death of the deceased partner, in manner following (that is to say); one moiety or equal half part of such sum, with half a year's interest on the whole sum, at the expiration of six calendar months from the day of such death, and the remaining moiety or equal half part of such sum, with half a year's interest thereon, at the expiration of twelve calendar months from the day of such death; *And* the surviving partner, his executors or administrators, shall also within twenty days after the balance of the share of the deceased partner shall be so fixed as aforesaid, execute and give to the executors or administrators of the deceased partner another bond, in a sufficient and reasonable penalty, for indemnifying them and the estate and effects of the deceased partner from and against the debts and engagements due and owing from the said copartnership at the time of such death, and from and against all actions, suits, damages and expenses whatsoever in respect thereof; *And* the executors or administrators of the deceased partner shall within the said twenty days release and assign to the surviving partner, his executors or administrators, all their share, right, title and interest of, in, and to the stock, monies, debts and effects belonging, due and owing to the said copartnership, and as far as possible empower and enable him and them to recover and receive the same.

one moiety at the end of 6, and the other at the end of 12, months from such death.

And the surviving partner shall give to the executors or administrators of the deceased partner, a bond of indemnity against the debts of the copartnership;

and such executors or administrators shall assign to the surviving partner their share in the copartnership capital and effects.

That in case the debts and engagements of the said copartnership at the time of the determination thereof by the decease of a partner, shall amount to more than the sum of pounds, the surviving partner, his executors or administrators, shall not be entitled to a conveyance or assignment of the share of the deceased partner in the said copartnership stock, monies and effects, until the debts and engagements of the said copartnership shall be reduced to the said sum of pounds.

That if the debts of the copartnership shall amount to more than *l.* the surviving partner shall not be entitled to an assignment of the deceased partner's share, until the debts are reduced to that sum.

That in case the surviving partner shall be desirous of purchasing the share of the deceased partner of and in the said copartnership stock, monies and effects, but shall be unable to purchase the same upon the terms hereinbefore in that behalf mentioned, it shall be lawful for the executors or administrators of the deceased partner, whether empowered so to do by the will of such deceased partner or

That the executors of the deceased partner may make other arrangements with the surviving partner, if necessary, whether authorised

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not, to make and enter into such other arrangements and agreements with the surviving partner, in regard to the share of the said deceased partner, as they shall think fit.

to do so by will, or not.

That if the surviving partner shall not purchase the deceased partner's share, the affairs of the copartnership shall be wound up as if the copartnership had determined by effluxion of time.

THAT if the surviving partner, his executors or administrators, shall not purchase the said share of the deceased partner, under or by virtue of the provisions hereinbefore in that behalf contained, then, and in such case, the affairs and concerns of the said copartnership shall be settled and wound up in the same manner as the same are hereinbefore directed to be settled and wound up, at the expiration of the said copartnership, by effluxion of time or by dissolution thereof by either of the said partners, pursuant to the power hereinbefore for that purpose contained as aforesaid.

Arbitration clause.

THAT if at any time during the said copartnership, or after the end thereof, any dispute or controversy shall arise between the said parties, or between one of them, and the executors or administrators of the other of them, or between their respective executors or administrators, concerning any of the clauses, covenants, and agreements herein contained, or any valuation or appraisement to be made as aforesaid, or any other matter or thing whatsoever in any wise relating to the said copartnership, the same shall be referred to the award or arbitration of two persons; one of the arbitrators to be named by the said [A.], his executors or administrators, and the other of them by the said [B.], his executors or administrators, within thirty days next after any such dispute or controversy shall so happen; *And*, &c. (*usual arbitration clause*, see *ante*, p. 129.) IN WITNESS, &c.

DEED *of* COPARTNERSHIP *between* BREWERS, *in a large Concern, with Special Provisions for the Expulsion of Partners, and for Dissolving the Copartnership.*

BETWEEN BREWERS.

THIS INDENTURE made the day of 182 , BETWEEN [A.] of, &c. of the first part; [B.] of, &c. of the second part; [C.] of, &c. of the third part; [D.] of, &c. of the fourth part; and [E.] of, &c. of the fifth part. WHEREAS the said [A.], [B.], [C.], [D.], and [E.] did on the day of now last past enter into partnership together, and become copartners and joint traders in the art or mystery of brewers, with the capital stock or sum of pounds, brought into the business by the said partners in equal shares and proportions; which capital or joint stock consisted partly of monies, and partly of the brewhouse, store-houses, malt, hops, beer, casks, brewing utensils, horses, drays, public houses, and other estates and effects, then lately belonging to a copartnership formerly carried on by the said [A.], [B.], and [C.], but dissolved on the day of then last past: (A particular account and valuation of all which monies, articles, estates, and effects, hath lately been taken and made by proper persons appointed for that purpose by the said parties hereto, and signed by the said parties in testimony of their approbation thereof) (*a*). AND WHEREAS the

Parties.

Recites the present amount of the capital and stock in trade,

according to a valuation lately made.

(*a*) The following recitals may be useful in a case where, upon the retirement of one partner, a new copartnership is formed with another person, upon the like terms.

"WHEREAS the said [A.] hath for some time past exercised or carried on in copartnership with [B.] the trades or businesses of a chemist and druggist at or in the said messuage or tenement and premises in Street aforesaid. AND WHEREAS the said copartnership was by mutual consent determined and dissolved as from the day of now last past, and notice of such dissolution, signed by the said [A.] and [B.], was advertised or published in the London Gazette of the day of this instant month of . AND WHEREAS the estate, right,

BETWEEN BREWERS.

said parties hereto have agreed, for the purpose of declaring and ascertaining the terms and conditions of their said co-partnership, to enter into the covenants and agreements hereinafter contained. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the premises, and of the mutual trust and confidence which the said parties hereto have and repose in each other; They the said parties hereto, for themselves respectively, and for their respective heirs, executors, and administrators, do COVENANT and agree, each and every of them with the others and other of them, mutually and reciprocally by these presents, in manner following, (that is to say);

Agreement to enter into the covenants after contained.

Testatum.

Each partner covenants with the others as follows:

Term of co-partnership to be 14 years, if the parties live, subject to dissolution by notice.

THAT they the said parties hereto shall from the said day of now last past, become, continue, and be copartners and joint traders in the art or mystery of brewers, for the term of fourteen years, if all of them, the said parties hereto, shall so long live: unless the same shall be sooner dissolved by notice pursuant to the power in that behalf hereinafter contained.(*b*)

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and interest of the said [B.], of and in the stock in trade implements, fixtures, utensils, credits, property, and effects of the said [A.] and [B.] as such copartners as aforesaid, has been duly assigned by the said [B.] to the said [A.], as and for his own proper goods, chattels, credits, and effects. AND WHEREAS the said [A.] hath agreed to admit the said [C.], as a partner in the said trades or businesses of a and , so carried on by the said [A.] and [B.] as aforesaid, as from the day of this instant month, upon the terms hereinafter expressed, the said [C.] purchasing from the said [A.] a moiety of the stock in trade, implements, fixtures, utensils, credits, property of or belonging to the said late partnership between the said [A.] and [B.], at the price or sum of pounds, which purchase hath been duly completed."

(*b*) Sometimes the proviso for determining the copartnership at the end of a given period, is inserted in this place, thus:

That A. B. C. and D. will be partners till 31 Dec. 183 ,

"That they, the said [A.], [B.], [C.], and [D.], shall become and continue copartners in the said trades or businesses of a and , in all their

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THAT the said copartnership trade or business shall be carried on at the Brewhouse in aforesaid, where the same is now carried on, or at such other place or places as the said copartners shall hereafter from time to time think proper, by and under the name and firm of "[A.], [B.], [C.], [D.], and [E.]"

The trade to be carried on at , under the firm of ——.

THAT the said parties hereto shall from the said day of now last past, and at all times during the continuance of the said copartnership, be interested in and entitled to the said capital or joint stock so ascertained and valued at pounds, as aforesaid, and all gains, profits, and increase to be made by or from the same, including all premiums taken with clerks or apprentices, in equal shares and proportions; *And* that the said capital stock of pounds, and all gains, profits, and increase thereof, shall from time to time during the said copartnership be continued and employed in the said joint trade; and no part thereof be taken or drawn out, or be by any of the said parties used, converted, or employed for any other trade, use, or purpose whatsoever; *save* that each and every of the said parties hereto shall be at liberty to take thereout, by two half-yearly portions, a sum equal to 5*l.* per cent. per annum upon the amount of his share in the said capital so brought in as aforesaid; and a yearly sum of pounds, in respect of his share in the gains and profits of the said business.

All the parties to be equally interested in the capital;

and no part of it to be drawn out, except that each partner may draw out 5*l.* per cent. on his share of capital, and a yearly sum of —— *l.* in respect of profits.

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branches, upon the terms, and under and subject to the observance and performance of the covenants and stipulations hereinafter expressed, from the 24th day of June now last past to the 31st day of December 183 , if all of them, the said [A.], [B.], [C.], and [D.], shall so long live: PROVIDED ALWAYS, that if any of the said partners shall be desirous that the said copartnership shall determine at the end of the first four years of the said copartnership, and of such his desire, shall give six calendar months' previous notice in writing to the others of them, or leave such notice at the place where the copartnership business shall for the time being be carried on, then and in such case the said copartnership shall, at the end of the first four years thereof, absolutely cease and determine."

with proviso for determining it at the end of the first four years, on six months' notice.

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No distinct departments; but all the partners diligently to apply themselves in the business;

THAT there shall be no distinct and separate departments of the said trade or business held by any of the said parties hereto(*c*), but the said trade or business shall in all things during the continuance thereof, be managed, conducted, and carried on by and with the consent of all the same parties; *And* that all of them shall and will at all proper and convenient times during the continuance of the said copartnership, diligently and faithfully apply and employ themselves in and about the affairs and business thereof, and in managing and conducting the same for the greatest advantage of all the said parties, and of the said joint stock, and for promoting the interests thereof; *And* that none of the said parties shall or will during the continuance of the said copartnership, be concerned or in any manner engaged in any other trade or business whatsoever.

and none to carry on any other trade.

That A. shall have the use of the house, with certain allowances.

THAT the said [A.] shall, during the continuance of the said copartnership, have the exclusive use of the house in which he now resides, being part of the said copartnership property, free of all rent, taxes, and other outgoings, and be allowed candles, coals, and beer for the use of himself and family residing in the said house, in like manner as those articles have been heretofore allowed him; and the expenses of repairing the house, and keeping the same insured, shall be defrayed by the copartnership.

That all losses and expenses

THAT the rent, taxes, and outgoings payable for or in respect of the said brewhouse and premises, or of any

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(*c*) In a copartnership deed between chemists and druggists, where it was agreed that each partner should hold a separate department, the following clause was inserted:

That partners shall hold different departments.

"That the said [A.] shall superintend and manage the Wholesale department of the said copartnership trade or business; that the said [B.] shall superintend and manage the Retail department of the said copartnership trade or business; that the said [C.] shall superintend and manage the Laboratory department of the said copartnership trade or business; and that the said [D.] shall keep the books and cash of the said copartnership, and generally superintend and manage the Counting-house department of the said trade or business."

other brewhouse and premises which shall or may hereafter be taken for carrying on the same trade, and all debts and demands that shall be contracted and become due and owing by the said parties by reason or on account of the said joint copartnership, and all losses and damages which shall arise or happen to the said joint stock, or the proceeds or gains thereof, in or by the said joint trading, by bad debts, accidents, damage or decay of goods, or any proper and necessary charges and expenses which shall accrue, be occasioned, laid out, or incurred in the said joint trade and dealing, shall from time to time and at all times hereafter during the continuance of the said copartnership, be paid, sustained, or borne by and out of the whole of the said joint stock, and the gains and profits thereof, so that each of the said copartners may pay and bear the same in equal proportions.

shall be borne equally.

That it shall not be lawful for any of the said copartners to lay out, or make any contract to buy or purchase any goods, wares, or merchandizes for or on account of the said copartnership, which when taken together in any one week shall exceed the sum of pounds; nor to lay out or expend any sum or sums of money whatsoever in erecting buildings, or in the purchase of utensils, or in new schemes of any kind, without the consent in writing of the others of the said copartners for that purpose first had and obtained.

No partner to contract for goods beyond a certain sum, without the consent of the others.

That none of the said copartners shall against the consent of any of the others of them, take, retain, or continue any person or persons as clerk or apprentice or servant, or otherwise, to be employed in the said joint trade, at any time during the continuance of the said copartnership.

Nor against consent to take or retain clerks, &c.

That none of the said copartners shall, without the consent in writing of the others of them for that purpose first had and obtained, lend any of the monies of the said copartnership to any person or persons whomsoever, nor shall any of the said copartners sell, lend, or deliver by way of credit or trust, any goods, wares, or commodities, belonging to the said copartnership stock or trade, to any person or persons whom the others of the said copartners shall by notice in writing under their hands forewarn or forbid to be credited or trusted on the said copart-

Nor to lend money, or trust for goods, where forbidden or forewarned by the other partners;

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nor to compound debts, without consent.

nership account; nor shall any of the said parties, without the consent of the others of them, release, compound, or discharge any debt or debts which during the said copartnership shall be due and owing to the said parties on account of the said joint stock or trade, save only so far and so much thereof as shall be actually and *bonâ fide* received or brought into the stock or capital of the said copartnership.

That all bonds and securities shall be taken in the joint names.

THAT all bonds, mortgages, assignments, and securities for any debt or debts due and owing to the said joint trade, shall be made and taken in the joint names of all the said copartners.

That each partner shall be answerable for his own receipts.

THAT each of the said parties shall *bonâ fide* answer and pay, or otherwise make good unto the said joint stock, all such monies or goods belonging to the same as he, or any person or persons (not being a clerk or servant employed by the said copartnership), by his order or direction, shall receive, discharge, or give any receipt for.

That none of them shall become security for other persons, without consent.

THAT neither of the said copartners shall, during the said copartnership, without the consent in writing of the others of them, sign, give, enter into, or execute, confess or acknowledge any judgment, statute merchant, statute staple, or recognizance for the debt or debts of any person or persons, or in any manner become security or bail with or for any other person or persons; *And* that if any of the said parties shall, notwithstanding this present covenant, confess any judgment, statute merchant, statute staple, or recognizance, or become bail or surety without such consent as aforesaid, then and in such case it shall be lawful for the others or other of them to dissolve this present copartnership as to the partner or partners so offending, and to exclude him or them from all future benefits thereof, paying to him or them his or their share or shares of the partnership effects, according to the then last rest made thereof, with interest; or, if there shall have been no rest made thereof, then according to a valuation to be made by arbitrators.

That if any one becomes bail, or confesses judgment, &c. without consent, such partner may be excluded on paying him his share.

That none of them shall give joint security for a separate debt.

THAT neither of the said copartners shall, during the said copartnership, sign or give to any person or persons any note, bill, or other security in the name of himself and his copartners, for his own private or separate debt, or do,

or permit or suffer to be done, any other act, matter, or thing whereby or by reason or means whereof the said joint stock or trade, or any of the monies, goods, wares, debts, or effects which shall be in or due or belonging to the same, can, shall, or may be in anywise charged or incumbered with or for any such private or separate debt or debts, but that every such private or separate debt or debts shall from time to time be paid and discharged by the party or parties contracting the same, by and out of his own separate estate, exclusive of his or their share and interest in the said joint stock: *And* that if any of the said copartners shall, for his own separate debt, or on his own separate account, give or sign a copartnership note, bill, bond, or draft, or by any other means subject or make the said copartnership estate liable to or chargeable with his own separate debt, that then and in such case it shall be lawful for the others or other of the said copartners, at any time within the space of six calendar months next after such transaction shall be found out or discovered, to determine and dissolve the said copartnership, as to the partner so offending, and to exclude him from all future benefit thereof, and to take to and purchase his share in the partnership effects, on the footing or valuation of the then last rest; or if there shall have been no rest, then on the footing of a valuation to be made by arbitrators, paying the sum of money, which shall be due for the same, at the end of six calendar months from such exclusion, with interest at five per cent. per annum, from the then last rest, or in case of no rest, then from such valuation.

And if any one shall do so, the partnership, as to such one, shall be dissolved, and the other partners may take his share at a valuation:

paying for the same at the end of six months:

That the said parties shall and will provide and keep proper books of account, and all such other books, as have been generally used and kept in the said trade or business, wherein shall be fairly written the just and true particulars of all monies received and paid, and of all malt, hops, and other goods, wares, merchandizes, and commodities bought and sold, and received in and delivered out, and the rates and prices at which, and the names of the several persons from and to whom, the same shall be bought and sold, and received and delivered out, and of all debts contracted on behalf of the said copartnership, and of all other matters and things in any way relating to the affairs of the said joint trade,

That books of accounts shall be kept, with full and proper entries therein.

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and necessary to shew the state and condition thereof, and particularly that the said copartners shall enter, or cause to be entered in the said books of account, the just and true particulars of all monies, which shall be received by them within six days next after the receipt thereof, except in case of a partner being absent from town, in which case, such entry shall be made within six days next after his return.

That the books, and all letters, securities, and writings, shall be kept at the counting house, and open to all the partners.

THAT the said books, together with all bills, securities, specialties, notes, and other securities and writings touching or relating to the said joint trade, shall always remain open and extant in some convenient part of the counting-house, or other place where the said joint trade shall be carried on, and where any of the parties may at all times, during the said copartnership, and at all times afterwards, whilst any of them remain interested in the estate or effects thereof, have free access to read, examine, or copy the same, or any of them, at his, or their free will and pleasure, without the let, interruption, or hindrance of or by the others or other of them, their, or his executors or administrators.

That on a certain day in each year, a balance sheet shall be prepared and entered in five books, which when signed by all the partners shall be final and binding, unless some manifest error to the amount of —*l.* be discovered therein within a year after such signing.

THAT the said partners, shall on the Saturday next preceding Midsummer day, which will be in the year of our Lord , and on the same day in every succeeding year, during the continuance of the said copartnership, or within days thereafter (unless prevented by sickness or other inevitable accident) meet and account together, and make, cast up, and finish between them a true, plain, and particular account, reckoning, estimate and valuation in writing of, for, and touching all monies, goods, wares, debts, and other estates, then being in or belonging or owing unto the said joint trade or copartnership, and all debts, duties, and demands then due and owing by or upon account of the same; and upon the finishing of every such account, the said parties shall write and enter, or cause to be written and entered, the true particulars of every such account, and the rest or valuation thereof in five several books, and shall subscribe all their names in each of the said books, at the foot of every such account entered therein, in the presence of two witnesses, who shall attest such signing, by writing their names in each of such books: and after such subscrip-

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tion and attestation, each of the said parties shall have or take one of the said books into his custody, to his own use; and such accounts, when settled, signed, and witnessed, as aforesaid, shall be final, binding, and conclusive, to all intents and purposes whatsoever, and shall not afterwards be opened, unravelled, or called in question by any person or persons whomsoever, except in respect to any manifest error or errors to the amount of pounds, or upwards, which may be discovered therein, within one year next after such rest shall be so made and signed as aforesaid; in which case, such error or errors shall be immediately rectified.

When same to be rectified.

That if any one of the partners will not join in taking the account, the other or others of them may take it:

That if any one of the said copartners shall at any time neglect or refuse, for the space of one calendar month, (whether from illness or any other cause) after being thereunto requested in writing, to join with the others of the said copartners in taking such account, and in making such rest, and subscribing his name thereto, as aforesaid; then, and in such case, such account, estimate, valuation, and rest shall and may be made and taken by the other partners, notwithstanding such one partner's neglect or refusal as aforesaid; *And* the said accounts, estimate, valuation and rest, when so made and taken, shall be entered and signed by the partners taking the same, and be witnessed as aforesaid, and shall be conclusive and binding on all the partners, in like manner as if they had all joined therein, and signed the same; *And* in case any two, three, or four of the said copartners shall at any time neglect or refuse for the space of one calendar month, after being thereunto requested in writing, to join with the other or others of the said partners in taking such account, and making such rest, and subscribing their names thereto as aforesaid; then, and in every such last mentioned case, such accounts, estimate, valuation and rest shall be made and taken by the last mentioned partners or partner, and such two master-brewers of skill and reputation in the trade, as the same partners or partner shall nominate for that purpose, and such account, estimate, valuation and rest, after having been reduced into writing and signed by such partners or partner, and the said two master-brewers (the truth and fairness thereof in these last cases being verified

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by the oaths or oath of the partners or partner so taking the same before some justice of the peace, master in chancery, or master in chancery extraordinary, and five copies thereof being made, signed, and witnessed, and one delivered to or left at the counting-house of the said co-partnership, for each copartner), shall be conclusive and binding on all the partners, in like manner as if the same had been made up and signed by all of them; and the same shall not afterwards be opened, unravelled, or liable to be called in question, save for a manifest error or errors to the amount of pounds, or upwards, to be discovered therein within such period as hereinbefore is limited in regard to the said first mentioned account.

That after such accounts, partners may divide the profits.

THAT at or after the finishing and adjusting of such yearly accounts as aforesaid, the said parties shall, from time to time, during the continuance of the said copartnership, make such dividend or dividends in money, out of the clear profits and increase of the said joint stock and trade (after a deduction of all incidental charges and expenses on account of the same trade, and of all bad and desperate debts, which may have happened to the same, within the preceding year), as shall then be mutually agreed upon between them, in proportion to their respective shares and interests in the said joint stock and trade.

That the partnership may be dissolved at the end of the first seven years thereof, by twelve months' notice from any partner.

THAT if any of the said parties shall be minded and desirous to dissolve and determine the said copartnership, at the end of the first fourteen years of the said term of seven years hereby agreed upon, and shall give six calendar months previous notice in writing of such his mind and desire, unto the others of the said partners, or cause such notice to be left at their usual, or last known places of abode, *Then*, and in such case, the said copartnership shall stand dissolved, and shall cease and determine, to all intents and purposes whatsoever, at the end of the said first seven years thereof, as fully and effectually as if the whole of the said term of fourteen years had run out and expired.

That within three months after the expiration of the copartnership, accounts shall be taken and the debts paid:

THAT within three calendar months next after the expiration or sooner determination of the said copartnership, the said parties shall meet and account together, and make, cast up, state, and adjust between them a true, plain, concise, and final account and reckoning in writing of and con-

cerning the said joint trade or copartnership, and all monies, debts, goods, wares, merchandizes, gains, profits, and advantages, which shall be then in, or due, owing, or belonging to the same, or to them the said partners for or by reason, or on account thereof; *And* also for and concerning all debts, sums of money, charges, losses, and expenses, which by reason and means of the said joint trade shall be by them the said copartners incurred, or shall remain due or owing to any person or persons, or which they, the said copartners shall have sustained for, or by reason, or on account thereof, so and in such sort, that it shall and may thereby appear, what the true state of the said joint trade shall then be, and what parts and proportions, and how much of the same shall be then severally due, belonging, or appertaining unto each of the said several copartners, according to their several interests and proportions in the capital stock, and according to the true intent and meaning of these presents; *And* that immediately thereupon, or so soon after as conveniently may be, true payment and satisfaction shall be made of all such debts and sums of money, as at the time of the expiration of the said copartnership shall be due or owing by the said copartners to any person or persons for, or on account of the said joint trade.

That mutual releases shall be given at the end of the copartnership, and proper assignments made;

That at the end or expiration of the said copartnership, or within three months next after the end thereof at the farthest, the whole of the then stock, goods, wares, merchandise, utensils, leases of public-houses, and every article and thing belonging to the said copartnership, (except outstanding debts), shall be sold for the most advantage, and converted into money; and the produce thereof, or a sufficient part of such produce, together with the ready money belonging to the said copartnership, shall be applied in discharge of the debts then due and owing from the said copartnership, and the surplus divided between and amongst the said copartners in equal proportions; and that all the then outstanding debts due and belonging to the said copartnership shall in like manner be divided between and allotted to them in like proportions; and that thereupon each of the said copartners, his executors and administrators, shall make and give to the others and other of them, their and his executors and administra-

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tors, good and effectual assignments and releases of the respective parts and shares of and in such copartnership outstanding debts as shall be so allotted to the others or other of them, together with full power and authority to sue for and recover such debts; and after such division, partition, allotment, release, and assignment shall be made, none of the said parties, his executors or administrators, shall or will receive, release, compound, or discharge any such debts or demands as shall be so allotted unto the others or other of them; and in case the produce of such sale and ready money shall prove deficient in satisfying all the debts due and owing from the said copartnership, that then an exact account shall be taken of such unsatisfied debts, and a proportionable part thereof shall be allotted to be paid by each of the said parties, according to their shares in the said trade, as aforesaid, and they shall mutually give to each other security for the due payment or discharge thereof accordingly.

and that after such division and assignments, the partners shall not discharge debts which may be allotted to the others:

That if any of the said copartners shall be desirous and choose to continue the said trade after the determination of the said copartnership, (of which it is agreed that the said [A.] shall have the first choice or refusal, the said [B.] the second choice or refusal, the said [C.] the third choice or refusal, the said [D.] the fourth choice or refusal, and the said [E.] the fifth choice or refusal), and shall signify such his mind and desire to the others of them, before the joint stock in trade of the said copartnership shall be sold or disposed of as aforesaid, then, and in such case, the joint stock shall not be sold; but shall, together with the debts due to the said copartnership, be appraised or valued by any one person, to be jointly nominated by all the said copartners, or by two persons, of whom the copartners leaving the trade shall nominate the one, and the copartner who shall so choose to continue the said trade, shall nominate the other, *And* the partner who shall so continue the trade, as aforesaid, shall be at liberty to have and to take such joint stock, goods, utensils, debts and effects, at such valuation, by paying for the same to the copartners leaving the trade, the shares or proportions such copartners shall respectively be entitled unto by virtue of these presents, or else giving good

That after the determination of the partnership, the partners shall in succession have an option of continuing the trade on his own account:

that in such case, the stock shall be sold to the continuing partner, and he shall pay the other partners their shares, or secure the same:

security to pay such shares or proportions within six calendar months from such determination of the said copartnership; and the apprentice, or apprentices, who shall have been taken during the said copartnership, and whose term or terms shall not be expired at the determination thereof, shall continue and remain with the copartner who shall continue such trade, in case any copartner shall think fit to continue the same: *And* in making such appraisment and valuation, as last mentioned, the said arbitrators are not to put any value or consideration on the said trade, by way of gift or good will for the same, but the lease of the said brewhouse is to stand at pounds.

that the good-will shall not be included in such valuation; but the lease of the brewhouse to stand at —*l.*

That if any of the said copartners shall die during the said term of years, the survivors of them, their executors, or administrators, shall and will accept and take the whole stock of beer, casks, public houses, money, debts, and effects whatsoever, which at the decease of the party so dying shall be in anywise belonging or appertaining to the said copartners, or by reason or on account of the said joint stock and trade, and in consideration thereof, and for the full recompense and satisfaction to be made to the executors or administrators of the party so dying, for his and their full share and proportion of and in the said joint stock and trade, the same survivors, their executors or administrators, shall and will well and truly pay and satisfy, or cause to be paid and satisfied, at or in their place of trade, unto the executors or administrators of the party so dying, so much good and lawful money of Great Britain, as the full value of the part or share of and belonging to the said party so dying, of and in the said joint stock and trade, debts, and effects, as aforesaid, did amount to, or shall appear to have amounted unto, according to the yearly account or rest then last before made and subscribed, as aforesaid, together with interest at five per cent. from the time of such rest; but if no such yearly account shall have been made within one week before or after the preceding Midsummer, aforesaid, then according to an account, estimate, valuation, and rest, to be taken and made within three calendar months after the death of the partner so dying, by two indifferent persons, one to be chosen by the surviving partners, and the other

That if any of the partners shall die during the copartnership term, his share in the stock shall be paid for in money to his executors by the continuing partners, with interest from the last rest; or if no rest, then according to a valuation to be made.

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That the executors of a deceased partner may examine all the copartnership books, &c.

by the executors or administrators of the deceased copartner; *And* to the end that the executors or administrators of the party so dying as last mentioned, may be fully acquainted with the state of the said copartnership, the surviving copartners shall permit and suffer the executors and administrators of such deceased copartner, at all reasonable times, on reasonable notice, to have recourse to and peruse or inspect all or any of the copartnership books, papers, and writings, and at their, his, or her own expense, to take copies or abstracts thereof, as they, he, or she, shall think proper.

That the money payable to such executors shall be paid by eight equal half-yearly instalments;

THAT all such sum and sums of money, as shall become due and payable by the survivors of the said copartners, their executors or administrators, to the executors or administrators of the party so dying, shall be paid by eight equal half yearly payments, in manner following (that is to say); one eighth part thereof, at the end of six calendar months next after the death of the partner so dying, with interest for the capital sum or sums so due to the estate of such deceased partner, at the rate of five per cent. per annum, to be computed from the last rest; one other eighth part thereof at the end of six calendar months then next following, with interest at five per centum per annum on the capital sum then remaining due, and so on, by like payments of equal eighth parts, with interest as aforesaid, at the end of every six calendar months, until the whole of the share of the party so dying shall be fully paid; *And* that for the better securing the payment of the said monies accordingly, the surviving partners shall, within three calendar months next after the decease of the party so dying, together with some other sufficient and responsible person or persons, as their surety or sureties, enter into and become bound unto the executors or administrators of such deceased partner, in one or more bond or bonds of double penalty, conditioned for payment to them of such money and interest, at such times, and in such manner as aforesaid; and to the end that the executors or administrators of such deceased partner may, from time to time, know what debts and demands shall be remaining due and owing from the said copartnership, a full, true, and particular account shall, within the said space of three calendar months, be taken

and that proper securities shall be given to the executors for payment thereof.

thereof, and for that purpose the creditors of such copartnership shall be requested, by one or more advertisements in the Gazette and other newspapers, to bring in an account thereof to the surviving partners, and a schedule or rest thereof shall be signed by the surviving partners and the executors or administrators of such deceased partner, and thereupon, within the said three months, such surviving partners, their executors and administrators, together with such other persons or person, as sureties or surety as aforesaid, shall enter into and become bound unto the executors or administrators of the partner so dying, in one or more other bond or bonds of a sufficient penalty, with condition for paying and discharging, within six calendar months next after the decease of such partner, all such debts and demands as at the time of his decease shall be jointly owing by the said copartners to any person or persons, for or on account of the said joint trade, or for any malt, hops, or other goods or things belonging, or in any wise touching or relating to the same, and for indemnifying and saving harmless the heirs, executors, and administrators of such deceased partner, their, his, and her lands and tenements, goods and chattels, of, from, and against such debts and demands, and of, from, and against all actions, suits, demands, and expenses, for or on account of the same debts, or any of them, and for producing to the executors or administrators of such deceased partner, at all seasonable times, and on reasonable notice, the releases and discharges for such debts and demands, and for giving such executors or administrators, at their expense, true and attested copies thereof, if required: *And further*, that the executors or administrators of the copartner so dying, shall and will, upon the settling or adjusting of the said copartnership affairs, and paying the balance due thereon, legally and effectually grant, assign, and release unto the surviving copartners, their executors and administrators, all the part, share, right, title, interest, claim, and demand whatsoever, of the party so dying, of and in all the stock in trade, monies, debts and effects, which at the time of the decease of the copartner so dying shall be in the said joint trade or copartnership, between them the said copartners, or jointly owing or belonging unto them, for or on

That the executors shall release.

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account of the said joint trade; *And* that the surviving partners shall and will, from the death of the partner so dying, continue and be copartners in the trade or business aforesaid, and carry on the same with the joint stock thereof, for their own use and benefit, during the then remainder of the said copartnership term of years, upon such and the same terms and conditions, and under and subject to such and the same provisoes and agreements as are hereinbefore contained, respecting the present copartnership, and the joint stock and profits thereof, so far as the case shall be applicable.

All monies lent to the trade by the deceased partner shall be repaid with interest, and secured by the bond of the surviving partners.

That if at the time of the decease of any one or more of the said partners so dying as aforesaid, there shall be due and owing from the copartnership for the time being to the partner so dying, any sum or sums of money which may have been lent or advanced by him to the said copartnership, or any interest in respect thereof, *then* and in such case, the surviving partners or partner shall and will, over and above the bonds and securities hereinbefore stipulated to be given by them or him, make and execute unto the executors or administrators of the partner so dying, a bond in double penalty, for the payment of the principal money and interest so due and owing, as last mentioned, from the said partnership to the partner so dying, at the end of six calendar months from the time of his death, with interest thereon from the time of such death, after the rate of five pounds per cent. per annum; *And* that if the partner so dying, shall at the time of his death, be indebted to the said copartnership in any sum or sums of money, for any part of his capital, which he, with the consent of the copartners, shall or may have borrowed or withdrawn from the said copartnership, or on any other account, *then* and in such case the same money, and all interest then due thereon, shall be deducted in the first place out of the sums for which the bonds from the surviving partners or partner is hereinbefore agreed to be given as aforesaid; and such bonds shall be given only for securing the residue of the money hereinbefore agreed to be secured, after making such deduction thereout as last hereinbefore mentioned.

That each of the partners may apprentice

That it shall be lawful for each of the said parties

hereto to place one of his sons, being of the age of fifteen years or upwards, as clerk or apprentice in the said trade, for the term of seven years, without paying any fee or gratuity in respect thereof; but if the conduct of any such clerk or apprentice shall be disapproved of by any of the other partners, then and in that case, such clerk or apprentice shall be subject to be dismissed, in the same manner as any other clerk or apprentice under the provisions hereinbefore in that behalf contained.

one of his sons to the copartnership, without fee.

AND LASTLY, that if any doubt, difference, question, or dispute shall at any time or times hereafter arise between the said parties, or any of them, or between any of them, or the heirs, executors, or administrators of any of the others of them, or between their respective heirs, executors or administrators, or any of them, touching the construction of these presents, or any clause, article, stipulation, matter, or thing herein contained, or touching any account to be made up and settled as hereinbefore is mentioned, or touching the measures to be taken and pursued in any event or events not hereinbefore expressly provided for, or in any other manner whatsoever, touching the trade, affairs, or business of the said copartnership, and such doubt, difference, question, or dispute, cannot be fully settled and decided between or amongst themselves; *Then* and in every such case, the matter of every such doubt, difference, question, or dispute shall, from time to time be reduced into writing, and be submitted and referred to the hearing or arbitration of two indifferent persons or arbitrators, one of whom shall be nominated and chosen by each of the parties so doubting, questioning, differing, or disputing; *And* the party first nominating an arbitrator, shall cause notice in writing of such nomination to be given to the said party or parties, or left at his or their usual or last known place of abode, which notice shall mention the name of the arbitrator so nominated, and the time and place when and where he will be ready to meet the other arbitrator, and take the matter in dispute in consideration, the time not being less than twenty days after such notice shall be so given or left; *And* the other party shall thereupon nominate the other arbitrator, and cause information in writing of such nomination to be

That all disputes shall be referred to arbitration.

BETWEEN BREWERS.

given to the party first nominating an arbitrator, or to be left at his usual or last known place of abode, within ten days after such notice shall be so given or left, as last aforesaid; *And* in default of such nomination by the said other party, or of such information thereof being so given or left, as aforesaid, the party first nominating an arbitrator shall and may also nominate the other arbitrator; and the said two arbitrators, so to be nominated and appointed as aforesaid, shall meet and proceed to hear and consider the matter in question, either at the time and place, to be mentioned in such notice, as aforesaid, or at such other time and place as shall be agreed upon for that purpose between the parties in dispute; and if either of the said arbitrators shall be prevented from attending at such time and place, as aforesaid, or at any other time or place to be fixed as hereinbefore is mentioned, by sickness or other unavoidable accident, then the meeting shall be adjourned by the arbitrator who shall attend, to such future time and place as he shall think proper, of which notice shall be given to all parties concerned: *And* the said arbitrators shall, at their first meeting, and before they themselves proceed to take the matter in question into consideration, nominate and appoint one other indifferent person, to act as umpire in the premises, in the cases hereinafter mentioned; *And* in case the said arbitrators, after a full hearing and consideration of the matter in question, shall not agree and determine the same, and make any award in the manner hereinafter mentioned, within thirty days next after their first meeting, or if the said arbitrators, or either of them, having met and appointed an umpire, shall afterwards neglect to proceed to a full and final hearing or consideration of the matter in question, and to determine the same, and make an award thereupon, within such thirty days, then, and in either of the said cases, the matter in question shall forthwith, after the expiration of the said thirty days, be submitted and referred to the determination of the person who shall be so appointed umpire, as aforesaid; but if either of the said two arbitrators, not being prevented by sickness or other unavoidable accident, shall refuse or wilfully neglect to meet the other of them, at the time to be appointed for their joint meeting, as aforesaid,

BETWEEN BREWERS.

or at the time to which such meeting shall be adjourned, as aforesaid, or at any subsequent meeting which shall be appointed at any time when such two arbitrators are together; *Then*, and in such case, it shall be lawful for the other arbitrator, immediately after such refusal or neglect shall be ascertained, to proceed alone to the hearing and consideration of the matter in question, and to determine thereon; *And* the said arbitrators and umpire, and sole arbitrator respectively (as the case may be), shall have power to adjourn the consideration of the matter in question, from time to time, and from place to place, as they or he shall think expedient; and the award, order, and determination of the said arbitrators, or umpire, or sole arbitrator (as the case may require), after a hearing of all parties concerned, or such of them as shall think fit to attend, or such person or persons as shall be deputed to attend on their behalf, and examining such evidence on both sides, and using such other means to obtain full information respecting the matter in question, as the said arbitrators or umpire, or sole arbitrator shall think proper, shall be final and binding, and conclusive to all intents and purposes whatsoever, upon the parties so differing, or in dispute as aforesaid, and their respective heirs, executors, and administrators, and shall be observed, performed, and kept by them accordingly, without any suit or trouble whatsoever; *So* that the award of such arbitrators, and one or more duplicate or duplicates thereof, be made in writing under their hands and seals, and be ready to be delivered to the parties in dispute, within thirty days next after the first meeting of the said arbitrators, or the award of such umpire, or such sole arbitrator as aforesaid, (as the case may be), and one or more duplicate or duplicates thereof be made in writing, under his hand and seal, and be ready to be delivered as aforesaid, within thirty days next after such umpire, or sole arbitrator, shall have a right to proceed to a consideration of the matter in dispute as hereinbefore mentioned; *And* for enforcing the performance and observance of every such award, and the submission thereto, the same shall, from time to time, be made a rule of the Court of King's Bench, according to the statute in that case made and provided, if the court shall so please. IN WITNESS, &c.

BETWEEN MERCHANTS, BANKERS, &c.

DEED *of* COPARTNERSHIP *between several Persons as* MERCHANTS; *with variations applicable to* BANKERS; *and with Special Provisions for enabling some of the Partners to dispose of their Shares, and introduce other Persons into the Copartnership in respect thereof, either as Active or Dormant Partners.*

Parties.

THIS INDENTURE, made the day of 182 , BETWEEN [A.] of, &c. of the first part; [B.] of, &c. of the second part; [C.] of, &c. of the third part; [D.] of, &c. of the fourth part; [E.] of, &c. of the fifth part; [F.] of, &c. of the sixth part; and [G.] of, &c. of the seventh part. (*a*) WHEREAS the said [A.], [B.], [C.], [D.], [E.], [F.], and [G.], have agreed to become copart-

Recital of the agreement to form the co-partnership.

BANKERS.

(*a*) A banking copartnership should not consist of more than *six* persons, as a partnership firm consisting of a greater number of persons, are prevented by statute from drawing, accepting, or endorsing bills or notes payable at less than six months after date. See 6 Ann, c. 22, s. 9. 15 Geo. II. c. 13, s. 5. 21 Geo. III. c. 60, s. 12. Also Bayley on Bills, page 50.

The above statutes seem formerly to have been considered as applying to banking partnerships only, *Wigan* v. *Fowler*, 1 Starkie, 459; but in the late case of *Broughton* v. *The Manchester Water Works Company*, 3 B. & A. 1, it was held, that the holder of a bill accepted by the company, and payable at three months after date, could not, in consequence of the statutes above mentioned, recover on such bill: it appearing on the face of the bill, that it was accepted by a corporation.

COAL MERCHANTS.

It may here also be noticed, that a partnership cannot be formed in the *coal* trade between more than *five* persons, as a partnership in that trade between a greater number of persons, would be deemed an unlawful combination to advance the price of coals. See 28 Geo. III. c. 53, s. 1.

BETWEEN MERCHANTS, BANKERS, &c.

ners in the business of a Merchant for the term or time, and under and subject to the provisions, conditions, covenants and agreements hereinafter mentioned and contained (*b*). NOW THIS INDENTURE WITNESSETH, that for effectuating the said agreement, and in consideration of the mutual confidence and trust which they have and repose in each other, Each and every of them the said [A.], [B.], [C.], [D.], [E.], [F.], and [G.], so far as relates to the observance and performance by him, his executors and administrators, of the covenants and agreements hereinafter contained on his and their parts to be observed and performed, *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the others, and each and every of the others of them, their and his executors and administrators, in manner following, (that is to say) ;

Testatum.

In consideration of mutual confidence, each partner covenants with the others as follows: *viz.*

THAT they the said [A.], [B.], [C.], [D.], [E.], [F.], and [G.], shall become and be copartners in the business of a Merchant (*c*), in all such articles and things as the said partners, or the major part of them, shall from time to time think proper (*d*), for the term of years, from the

That the parties will be partners for years.

(*b*) This recital is not necessary, and in many cases is omitted. The beginning of the deed will then stand thus:

Recital.

"THIS INDENTURE, made the day of BETWEEN [A.] of, &c. of the one part; and [B.] of, &c. of the other part, WITNESSETH, that in consideration of the mutual trust and confidence," &c.

(*c*) "In the trade or business of '*Bankers.*'"

BANKERS.

(*d*) The nature of the business intended to be carried on by the copartnership, should always be stated, and in general there will be no difficulty in determining what transactions do, and what do not, fall within the description of the business mentioned;—but in cases where it is difficult precisely to define the nature and limits of a business, it is advisable to add words to the above effect: more particularly where there are several partners. Without such a provision, it seems clear that even a majority of the partners cannot enter into different projects than those specified in the agreement, so as to bind a dissenting partner, who may insist upon a strict adherence to the articles. See *Natnsch* v. *Irving*, Gow. on Part. Appendix.

The nature of the business should be stated.

BETWEEN MERCHANTS, BANKERS, &c.

day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended. (*d*)

That the business shall be carried on under the firm of "A., B., and Co."

THAT the business of the copartnership shall be carried on under the firm or style of "A., B. & Co.," or such other firm or style as the said partners, or the major part of them, shall hereafter agree upon.

at the house and warehouse in street.

THAT the business of the said copartnership shall be carried on, at or in the house and warehouse in Street aforesaid, now in the occupation of the said [A.], or at or in such other place or places as the said partners, or the major part of them, shall hereafter agree upon.

That the capital shall consist of ——*l.* or such other sum as the partners may agree on;

THAT the capital or joint stock of the said copartnership, shall consist of the sum of pounds, or such other sums of money as the said partners, or the major part of them, shall hereafter agree upon, and shall be brought in by the said partners in the proportions following, that is to say; three fourteenth parts or shares thereof, by each of them the said [A.] and [B.], two fourteenth parts or shares thereof by each of them, the said [C.], [D.], and [E.], and one fourteenth part or share thereof by each of them the said [F.] and [G.] (*e*)

and shall be brought in in stated proportions.

(*d*) It is proper that some definitive period should be fixed on for the duration of the copartnership, as otherwise a partnership is dissolvable by either party at any time. *Hercy* v. *Birch*, 9 Ves. 357. *Peacock* v. *Peacock*. See 16 Vesey, 50—57.

BANKERS.

(*e*) In a copartnership deed between bankers, the following clause in regard to the capital to be brought in, was used:—

Capital of the copartnership.

"THAT the capital now necessary for carrying on the business of the copartnership shall be advanced by the partners in the following proportions (that is to say); one moiety or equal half part thereof shall be advanced by the said [A.], and the remaining moiety or equal half part thereof, shall be advanced by the said [B.], [C.] and [D.], in equal shares: *And* if at any time or times hereafter it shall be thought necessary to increase the capital of the said copartnership, the partners for the time being engaged in the said copartnership, shall advance the additional capital for the time being required, in the proportions in which they shall then be respectively entitled to the net gains and profits of the business of the said copartnership." See *ante*, p. 134.

That if any partner shall not bring in his share, the amount shall be carried to the debit of his account, and carry interest.

THAT *if any of the partners shall neglect or refuse to bring in his or their share or shares of the said capital, at the time he or they ought to bring in the same, the amount of such share or shares shall be placed to the debit of the account of such partner or partners with the copartnership, and shall carry interest.* See ante, p. 134.

That if any partner shall not bring in his share within six months after notice, the others may expel him.

THAT *if any of the partners shall neglect or refuse, for the space of six months after request in writing from the others of the partners, or the major part of them, to bring in his or their share or shares of the said capital, it shall be lawful for the others of the partners, or the major part of them, to expel the partner or partners for the time being offending in the premises, from the copartnership.* See ante, p. 134.

That the capital shall be employed in the business.

THAT the said capital or joint stock, and the increase thereof, and the gains and profits arising from the same respectively, shall (subject as hereinafter is mentioned) be used or employed in the business of the said copartnership.

That the rent and taxes payable for the copartnership premises, and all expenses and losses, shall be borne by the copartnership;

THAT the rent of the house and warehouse in Street aforesaid, and of any other house and warehouse, or other buildings in which the business of the said copartnership shall, for the time being, be carried on, and all repairs, additions, and alterations which shall be made in or to the same, and all taxes, rates, assessments, parish duties, and impositions which shall be laid or imposed upon, or become payable for or in respect of the same, and the wages or maintenance of the clerks, apprentices, and servants who shall be employed in the business of the said copartnership, and all proper charges and expenses which shall be occasioned or incurred in or about the said business, and all debts and engagements which shall be contracted for or on account of the said copartnership, and all losses and damages which shall come or happen to the same, or the business thereof, shall be paid or borne and discharged by and out of the joint stock of the said copartnership, and the gains and profits arising from the business thereof; or in case the same shall be deficient, then by the said partners, out of their respective separate estates, in the like shares and proportions in which they are hereinbefore required to bring in the capital of the said copartnership.

or, in case of deficiency, by the partners, out of their separate estates, in proportion to their shares in the capital.

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That the partners shall be entitled to the gains and profits in the like proportions.

That each partner may take for his separate use a yearly sum, in proportion to his share in the capital.

That the acting partners shall receive a given yearly sum for their trouble.

That if any money is brought in as a loan the same shall carry interest, and shall not be withdrawn or paid back without six months notice.

That books of account shall be kept.

THAT the said partners shall be entitled to the net gains and profits of the business of the said copartnership (after making such deductions as hereinbefore mentioned), in the like shares and proportions in which they are hereinbefore required to bring in the capital of the said copartnership.

THAT it shall be lawful for each and every of the said partners to take out of the monies and effects of the said copartnership, by four equal quarterly portions, on the day of , the day of , the day of , and the day of , in every year during the said copartnership, for his own separate use, a sum of money equal in amount to pounds for every one hundred pounds of his share in the capital of the said copartnership.

THAT each of them the said [A.] and [B.] shall receive out of the monies and effects of the said copartnership, as a recompense or remuneration for his care, pains, and trouble in managing and carrying on the business thereof, the yearly sum of pounds, and so in proportion for any less time than a year; *And* that each of them the said [F.] and [G.] shall receive out of the same monies and effects, as a recompense or remuneration for his care, pains, and trouble in attending to the affairs and business of the said copartnership, the yearly sum of pounds, and so in proportion for any less time than a year.

THAT *if any of the said partners shall bring into the said copartnership business any sum of money, by way of loan, the same shall carry interest, and shall not be withdrawn or paid back without six months' notice; and that if the same be not withdrawn on such notice, interest thereon shall cease at the expiration of the notice.* See ante, p. 123.

THAT proper books of account shall be kept by the said parties, and that true, plain, and perfect entries shall be made therein of all the monies, goods, wares, merchandise, effects, and things, belonging or relating to the business of the copartnership, or which shall be received, paid, sold, delivered, or contracted for, in the course of such trade or business, and of such other matters and transactions as are usually written and entered into books of account kept by persons engaged in a mercantile concern; toge-

ther with all such circumstances of names, times, and places, as may be necessary or useful for the better manifestation of the state and proceedings of the business of the said copartnership.

That the books, and all securities and writings, shall be kept at the counting-house;

THAT the said books of account, together with all bonds, bills, notes, specialties, assurances, securities, letters, and other writings, which shall from time to time concern the said copartnership, shall remain and be kept at the counting house where the copartnership business shall for the time being be carried on (*f*); *And* that each and every of

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(*f*) In a copartnership deed, where the partners carried on their business in several different towns, the clause in regard to keeping books of account was as follows:

Clause for keeping books of account, where the partners carry on their business in different towns.

"THAT the said partners shall from time to time, by themselves or their clerks acting under them, write or make, or cause to be written or made, in proper books of account to be provided and kept for that purpose in or upon some convenient part of the counting-houses for the time being of the said partnership, where the business to which such entries respectively relate shall be transacted, true, plain, and perfect entries of all monies which shall be received and paid by them respectively, and of all goods and other articles which shall be received or delivered by them respectively, or by any of their clerks under their direction, on account of the said copartnership, and also all such other matters and things as are usually written and entered in the books of account of persons in the same or the like way of trade and business; together with all such circumstances of names, times, and places, as may tend to manifest the state and proceedings of the trade or business, dealings, and transactions of the said partnership, and to ascertain their accounts, together with their gains and losses, and the amount of their debts and credits: *And* that the same books of account, and all letters, bills, bonds, specialties, notes, and other securities, and all deeds and writings whatsoever, concerning the business, dealings, transactions, and affairs of the said partners, on account of their said partnership, shall be kept at the respective counting-houses for the time being

BETWEEN MERCHANTS, BANKERS, &C.

and all partners shall have free access thereto.

the said partners shall and may, from time to time, and at all times, have free access to inspect and examine, cast up and copy out the same, at his own free will and pleasure, without any hindrance or denial of or by the others or any of the others of them.

That A. B. F. and G. shall devote the whole of their time to the business;

THAT the said [A.], [B.], [F.], and [G.], shall devote the whole of their time to the business of the said copartnership, and shall faithfully and diligently employ themselves in and about the affairs and concerns thereof, and carry on and conduct the same according to the best of their skill and ability.

That C. D. and E. need not act therein further than they think fit.

THAT the said [C.], [D.], and [E.] shall not be obliged to devote more of their time and attention to the business of the said copartnership than they shall respectively think fit, but that, so far as they shall attend thereto, they shall carry on and conduct the same according to the best of their skill and ability.

That the partners will render faithful accounts.

THAT *the partners shall be just in all buyings, sellings, receipts, dealings, &c. and give and render faithful accounts to the others of them when required.* See ante, p. 122.

That the partners shall not employ the monies or engage the credit of the copartnership, except in the ordinary course of business;

THAT none of the said partners shall, without the consent in writing of the others or other of them, use or employ any of the monies, goods, or effects, belonging to the said copartnership, or engage the credit thereof in any matter or thing whatsoever, except upon the account, and for the use and benefit of the said copartnership, and except in the regular and ordinary course of business.

nor engage in other businesses.

THAT *none of the said partners shall, during the copartnership, engage in any other trade, manufacture, or business.* See ante, p. 152.

That no partner shall, without the others' consent, take apprentices; or against such consent, hire or dismiss clerks or servants;

THAT none of the said partners shall, without the consent of the others of them, or the major part of them, take any apprentice or articled clerk, to be employed in the business of the said copartnership, or hire or dismiss any other clerk or servant employed, or to be employed in the

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of the said partners where the business shall be transacted, or otherwise in such convenient place or places as the said partners, or the major part of them, shall from time to time agree and determine upon."

said business, against the consent of the others of the said partners, or the major part of them.

THAT none of the said partners shall, at any time during the continuance of the said copartnership, without the consent in writing of the others of them, or the major part of them, lend any of the monies, or deliver upon credit any of the goods, belonging to the said copartnership, to any person or persons whom the others of the said partners, or the major part of them, shall, before the lending or delivering of such monies or goods, have forbidden to be trusted; or without the like consent, release or compound any debt or debts due and owing to the said copartnership, except for the full amount thereof first paid; or without the like consent sign the certificate of any bankrupt indebted to the copartnership, except in cases where the amount of the debt shall be under pounds.

or trust persons whom the others shall have forbidden to be trusted; or release or compound debts, or sign bankrupts' certificates.

THAT if any of the said partners, shall at any time act contrary to, and infringe the said last mentioned covenant and agreement, the partner for the time being offending in the premises, shall, if required so to do by the major part of the others of the said partners, forthwith pay into the stock and capital of the said copartnership, the full amount of the monies or goods which he shall have so lent, or delivered upon credit as aforesaid, or of the debt or debts which he shall have so released, or compounded, or for or in respect of which he shall have so signed a certificate, as hereinbefore is mentioned.

That if any partner shall infringe the last mentioned covenant, he shall pay to the copartnership the amount or value of the monies, goods, or debts, so lent or released.

THAT none of the said partners (*g*) shall buy, order, or engage in any contract for any goods, merchandize, or article whatsoever, on account of the copartnership, exceeding the value of pounds, without the consent in

That if any partners shall buy any goods beyond the value of — *l.*,

(*g*) Another form:

"THAT none of the acting partners, for the time being, shall buy, order, or engage in any contract, for any article or articles whatsoever, on account of the copartnership, exceeding the value of pounds, without the consent of the others of them for that purpose first had and obtained, unless the others of them be absent from town, and cannot be conveniently consulted thereupon."

Acting partners not to contract beyond a given extent, without the others' consent, unless the others are absent from town.

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writing of the others of them, or the major part of them, for that purpose first had or obtained; *And* that if any of them shall buy, order, or engage in any contract for any goods, merchandize, or article, exceeding the value of pounds, without such consent as aforesaid, then and in such case, the others or other of them shall have it in their or his choice or option, either to receive and take such goods, merchandize, or article, for or on account of the said copartnership, or to let the same remain and be for the separate use and benefit of the party or parties who shall so buy, order, or engage in any contract for the same without the consent of the others or other of them, as aforesaid.

without the consent of the others, the other partners may take or reject them.

That none of the partners shall, without consent of the others, become bound as bail, or do any act whereby the copartnership effects may be taken in execution.

THAT none of the said partners shall, without the consent in writing of the others or other of them, for that purpose first had and obtained, enter into any bond, or become bound as bail, surety, or security, with or for any person or persons whomsoever, or subscribe any policy of insurance, or do, or knowingly suffer to be done, any act, deed, matter, or thing whatsoever, whereby or by means whereof the stock and effects of the said copartnership shall or may be seised, attached, extended, or taken in execution.

That each partner shall indemnify the others from his private debts.

THAT each of the said partners shall, from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified the others of the said partners, and their respective executors and administrators, and the capital or joint stock of the said copartnership, from and against his own private and particular debts and engagements, and all costs, charges, damages, and expenses on account thereof.*

That if any partner shall appropriate to his own use any of the copartnership effects, he shall pay to the copartnership double the amount.

THAT if any of the said partners shall take and appropriate to and for his or their own use, any of the cash or effects of the said copartnership, save and except as herein is expressly provided, the partner for the time being so taking and appropriating any such sum or effects, shall forthwith pay to the said copartnership a sum of money equal to double the amount or value of the cash or effects so taken and appropriated, the same to be for the benefit

* See *ante*, p. 126.

BETWEEN MERCHANTS, BANKERS, &C.

of all the said partners, in proportion to their respective shares in the capital of the said copartnership; and until paid, to be placed to the debit of the account of the partner liable to pay the same, with the said copartnership (*h*).

Payments by the copartnership.

For clauses respecting the appointment of bankers for the copartnership, and the mode in which payments on account of the copartnership shall be made, see pp. 123, 124, 143 (*i*).

That yearly accounts and rests shall be made.

THAT on the first day of now next ensuing, and on every succeeding first day of , during the continuance of the said copartnership, or so soon after as circumstances will permit, a full and general account or rest in writing shall be made and taken by the said partners, or some or one of them, either alone or with the concurrence of the other or others of them, of all monies,

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BANKERS.

(*h*) In a partnership deed between country bankers, the following clauses were inserted:

That no promissory note shall be issued which is not signed by a partner, and numbered, and entered; and if any note shall be otherwise issued, the partner issuing the same, shall pay it out of his separate estate.

"THAT no promissory note shall be issued in the name or on the account of the copartnership, which is not signed by one of the said partners, and regularly numbered, and entered by some clerk of the copartnership, in a book to be kept for that purpose, and signed as entered by the clerk entering the same; *And* that if any partner shall issue, or authorise to be issued, in the name or on the account of the copartnership, any promissory note, which is not so signed, numbered, and entered as aforesaid, he shall pay and discharge the same out of his separate estate, and save harmless and indemnified the said copartnership estate and effects therefrom."

That none of the partners shall increase the number of notes in circulation without the others' consent.

"THAT none of the partners shall increase the number of notes of the copartnership, for the time being, in circulation, beyond the extent or value of hundred pounds, without the previous consent in writing of the others of the said partners."

(*i*) It is generally unnecessary to state in the articles of copartnership in what manner the drafts and checks on the bankers shall be signed, as this can be easily arranged with the bankers at the time the account with the copartnership is opened.

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debts, and effects belonging or due or owing to the said copartnership, and of all such debts as shall be then owing by the said partners, for or on account of the said copartnership, to any person or persons whomsoever, and also of all such matters and things as are usually comprehended in accounts of the same nature; *And* that when and so soon as the said yearly account, for the time being, shall be adjusted and settled, the same shall be signed by all the said partners, and the said partners shall afterwards be bound and concluded by each such yearly account, unless some manifest error, to the amount of one hundred pounds or upwards, shall be found therein within six calendar months from the settlement thereof respectively; *And* in that case the account or accounts shall be opened and unravelled, so far only as relates to the error or errors which shall have been found therein as aforesaid.

That after the settlement of such yearly accounts as aforesaid, the partners shall divide such part of the profits as they think proper, and carry the remainder to the joint stock, in increase thereof.

THAT with all convenient speed after the settlement of every such yearly account, as aforesaid, such part of the gains and profits of the preceding year, as the said partners, or the major part of them, shall agree upon, after payment or allowance of the yearly sums so agreed to be taken out by them for their separate use as aforesaid, shall be taken out and divided between the said partners, in proportion to their several and respective shares in the capital or joint stock of the said copartnership, and that the residue of the same gains and profits shall, from time to time, be added to the said capital, in increase thereof, for the benefit of the said partners, in proportion to their respective shares in the said capital (*k*).

That if any partner shall be indebted to the copartnership on the division of profits, his share in the profits shall be applied in discharge of such debt.

THAT if any of the said partners shall, at the time of any such division of gains and profits as aforesaid, be indebted to the said copartnership, it shall be lawful for the other or others of the said partners to apply the share or shares of the partner or partners so indebted, of and in the same gains and profits, or a sufficient part thereof, in or towards satisfaction and discharge of his or their debt or debts with the said copartnership.

That if any partner shall

THAT if any of the said partners shall, with the consent

(*k*) See *ante*, p. 126.

of the others of them, or the major part of them, leave in the said copartnership business, his or their share or shares in the gains and profits for the time being, divided as aforesaid, or any part thereof, the same shall be carried to the credit of his or their account with the said copartnership, and shall carry interest after the rate of 5*l.* for 100*l.* by the year, until repaid or withdrawn, which interest shall be paid half-yearly.

leave his share in the profits on such division, in the copartnership business, the same shall be carried to his account, and bear interest.

THAT it shall be lawful for the said [G.], by any deed or writing under his hand and seal, to assign or otherwise make over unto the said [B.], his executors or administrators, the said one-fourteenth part or share of him the said [G.], of and in the said copartnership business, and the capital or joint stock thereof, and the gains and profits arising from the same, for securing, by way of mortgage, a debt or sum of pounds, which is now due and owing to the said [B.] from the said [G.], with interest.

That G. may mortgage his share in the copartnership to B. for securing a debt now owing to him from the said G.

THAT (except as aforesaid) none of the said partners shall at any time during the continuance of the said copartnership, mortgage or sell any part or parts of his or their share or shares of and in the said copartnership trade or business, or the stock, capital, and effects thereof, or the gains and profits arising from the same, without the consent in writing of the others of them, or the major part of them, for that purpose first had and obtained; *And* that if any of them shall attempt or agree so to do, the partner for the time being so attempting or agreeing to mortgage or sell his said share, shall forfeit to the others of the said partners all the profits of the said copartnership which shall at that time remain in the said copartnership in respect of his share, and also all future profits which shall accrue in respect of the same share thereafter during the remainder of the said copartnership.

That no partner shall mortgage or sell his share (except as aforesaid) without the others' consent; and that if any shall attempt to do so, he shall forfeit his share in the profits to the other partners.

THAT it shall be lawful for the said partners, or the major part of them, to introduce into the said copartnership any person or persons whom they may think fit, as a partner or partners therein.

That the major part of the partners may introduce other partners in the business.

THAT in case any person or persons shall at any time be introduced into the said copartnership under or by virtue of the provision lastly hereinbefore contained, the shares of the said partners shall be so altered and varied as

That if any person is introduced under the last clause, the shares of the

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partners in the copartnership shall be altered according to the amount of their shares in the capital.

that the share of each of the partners for the time being in the said copartnership, shall bear the same proportion to the shares of the other partners therein, as the amount of his capital in the said copartnership shall bear to the amount of the capital of the other partners therein, unless the said partners, or the major part of them, shall by writing otherwise direct.

That the partners so admitted shall hold their shares upon the like terms and conditions as the other partners hold theirs.

THAT the person or persons who shall be so introduced into the said copartnership as aforesaid, shall have, hold, possess, and enjoy his or their share or shares therein, upon such and the like terms and conditions, and with, under, and subject to such and the like benefits, advantages, powers, provisoes, stipulations, regulations, covenants, and agreements in every respect, as the other partners or partner for the time being shall have, hold, possess, and enjoy their respective shares therein, or as near thereto as circumstances will admit of.

That if any of the partners shall leave the kingdom for more than three months, or become bankrupt, &c. the others may expel the offending partner from the copartnership.

THAT in case any of the said partners shall at any time during the continuance of the said copartnership, be and continue out of this kingdom for the space of three calendar months, without the consent of the others of them, or the major part of them, for that purpose first had and obtained, or shall become bankrupt or insolvent, or shall draw any promissory note, bill of exchange, or other security, in the name, or with the style or firm of the said copartnership, without such authority as hereinbefore in that behalf is mentioned, or shall neglect or refuse for the space of three calendar months after being thereunto requested, to join in adjusting or settling any such yearly account and reckoning as hereinbefore is mentioned, or shall apply to his separate use any of the stock, monies, and effects of the said copartnership, to the amount of pounds or upwards, or shall suffer the stock, monies, and effects of the said copartnership, or any part of them, to be seized, attached, or taken in execution for or on account of his private and separate debts or engagements, then and in any of the said cases, it shall be lawful for the others of the said partners, or the major part of them, by giving notice in writing to that effect to the partner for the time being offending in the premises, or leaving such notice at his usual or last known place of abode in Eng-

land, to expel (*l*) such partner from the said copartnership ; *And* the said copartnership shall, as to the partner so offending, cease and determine from the time when such notice shall be so given or left as aforesaid.

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THAT it shall be lawful for each of them the said [A.] and

That A. and B. may retire from

(*l*) Another form:

"THAT in case any of the said partners shall at any time during his or their continuance in the said copartnership, depart the realm for any debt, or for any crime, or shall become bankrupt or insolvent, or shall suffer his or their body or bodies to remain in execution for three days or more after being arrested, or shall procure hired bail, or shall permit any part of the said copartnership effects to be taken in execution, attached, or sequestered for any debt or debts owing or to be owing by him or them, on his or their separate account, to the amount of pounds or upwards, or shall refuse to join in an arbitration when thereunto requested pursuant to the agreement hereinafter contained, or to execute a deed of reference, or shall refuse to name an arbitrator, or, unless prevented by sickness or other unavoidable accident, shall refuse to attend the arbitrators or umpire when named at the times and places they or he shall reasonably appoint, or shall depart from his or their dwelling house for the time being for the purpose of secreting himself or themselves from his or their partner or partners for the time being, or his or their creditors for the time being, or shall sell or mortgage all or any part of his or their share of and in the said copartnership business and the capital or joint stock thereof, and the gains and profits arising from the same, or shall attempt or agree so to do, or shall lend or use the said copartnership firm, or the names of the other partners for the time being, in signing, drawing, indorsing, accepting, or negociating any bill, note, bond, or other security, or any receipt, acquittance, or discharge, other than on account of the debts or concerns of the said copartnership, and in the due and regular course of the said partnership dealings and transactions, or shall (except as aforesaid) take and appropriate to his or their own use any of the cash or effects of the said copartnership, *Then*, and in

Expulsion clause.

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the business after the first seven years, on giving six months' notice.

[B.] at any time after the expiration of the first seven years of the said copartnership term of years, to retire from the business of the said copartnership, on giving six calendar months previous notice in writing of his intention so to do, to the others of the said partners for the time being, or

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every or any of the said cases, it shall be lawful for the others of the said partners, or the major part of them, at any time within three calendar months after such act or matter as aforesaid shall be made known, upon giving a notice in writing to that effect to the partner or partners respectively so acting or making default, or leaving the same at his or their dwelling house, or the place or respective places of his or their most usual residence or abode in England, or affixing such notice in any conspicuous part of the counting-house in which the business of the said copartnership shall be carried on, to expel from the partnership the person or persons so acting or making default as aforesaid, in any one or more of the particulars hereinbefore mentioned; and from the time of delivering, leaving, or affixing such notice as aforesaid, the person or persons to or for whom such notice shall be so delivered, or left or affixed, shall cease to be a partner or partners in the said partnership, without prejudice nevertheless to the remedies of the other partners and each of them, for the breach and nonperformance of all and every or any of the articles, clauses, and agreements in these presents contained, at any time or times before or after the time of giving, leaving, or affixing the said notice in manner hereinbefore mentioned."

That on the expulsion of a partner, a sum equal to the value of his share at the last rest, with interest, shall be secured by the bond of the continuing partner, payable by instalments at six, twelve, and eighteen months;

"THAT when any partner shall be expelled from the said partnership, such sum as shall be the value of the share of the expelled partner in the copartnership capital and effects, according to the last rest or annual account, together with interest thereon, after the rate of five pounds for one hundred pounds by the year, from the time when such rest or account shall have been taken, in lieu or in the nature of profits, shall, after deducting the amount or value of the monies and effects of the said copartnership, which the expelled partner shall have taken or misappropriated, together

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leaving such notice at their usual or last known places of abode in England.

That C., D., and E. may retire at any time, on giving six months' notice.

THAT it shall be lawful for any of them the said [C.], [D.] and [E.], at any time hereafter, to retire from the business of the said copartnership on giving six calendar

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with interest on so much of the same sums as shall from time to time remain unpaid, be secured to the expelled partner by the bond of the continuing partners, payable by three instalments, in equal portions, to become due severally and successively at the end of six, twelve, and eighteen calendar months from the time of such expulsion; AND that upon the execution of such bond, the share of the partner so expelled of and in the said copartnership effects and the profits thereof, from the time of taking the last rest or annual account, shall vest in the other partners, in proportion to their shares of the copartnership effects, and if required, shall be assigned by the expelled partner to or in trust for them accordingly; *And* the continuing partners shall also execute and give to the expelled partner a bond in a sufficient penalty for indemnifying him against the debts and engagements of the said copartnership at the time of such expulsion, and all claims and demands for or on account thereof."

that the share of the expelled partner shall vest in or be assigned to the other partners;

who shall by bond indemnify the expelled partner from the copartnership debts.

In many cases the following short provision for expelling a partner, and settling with him for his share, will be found useful:

"THAT if any of the said partners shall, at any time during the continuance of the said copartnership, with his or their own separate monies, or with the monies or credit of any other person or persons, be engaged or concerned in any trade or business, without the consent in writing of the others of the said partners, or the major part of them, for that purpose first had and obtained; *or* if any of the said partners shall issue out, give, accept, indorse, or negociate, any bill or bills of exchange, or any promissory note or notes, or any other security, in or with the copartnership names or firm, except upon the account of the said copartnership, and conformably to the true intent and meaning of these presents, *Then*, and in every or any such case, and at any time thereafter, it shall be lawful for the

That if any partner shall carry on other trades, or use copartnership firm in bills of exchange, &c.

the other partners may dissolve

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months' previous notice in writing of his or their intention so to do, to the others or other of the said partners for the time being, or leaving such notice at their or his usual or last known places or place of abode in England.

That if any partner shall retire under the last mentioned provisions, the copartnership shall, as to the retiringpartner, cease at the expiration of the notice.

THAT if any of the said partners shall, in pursuance of the provisions hereinbefore for that purpose contained, give or leave notice in writing of his intention to retire from the said business, the partner for the time being giving or leaving such notice, shall at the expiration of six calendar months from the time when the same shall have been so given or left as aforesaid, be considered to have retired from the said copartnership; *And* the said copartnership shall from that time, as to the partner so retiring, cease and determine.

That the major part of the partners may dissolve the copartnership, on giving to the others three months' notice.

THAT it shall be lawful for the major part of the partners for the time being to dissolve the said copartnership on giving three calendar months' previous notice in writing of their intention so to do, to the others or other of the said partners for the time being, or leaving such notice at their or his usual or last known places or place of abode in England; *And* upon the expiration of three calendar months next after such notice shall have been so given or left as last aforesaid, the said copartnership shall cease and

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the copartnership;

other partners or partner for the time being, by any writing under their or his hands or hand, to determine and put an end to the said copartnership; *And* in case the said copartnership shall be so determined, the stock in trade of the same copartnership shall thenceforth belong to, and the trade thereof shall thenceforth be carried on by, such last mentioned partners or partner, for their or his own use and benefit; *And* such payment or compensation shall be made or secured to the partner or partners so engaged, or becoming concerned in any other trade or business, or so issuing out, giving, accepting, endorsing, or negociating notes, bills, or other securities, as aforesaid, as his or their executors or administrators would have been entitled to, if such partner or partners had died during the continuance of the said copartnership."

in which case such payment or security shall be made or given to the offending partner as would be made or given to his executors, if he were deceased.

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determine, in like manner as if the whole of the said copartnership term of years had run out and expired.

That if any partner is expelled, or retires, or dies, during the copartnership term, a value shall forthwith be fixed on his share in the copartnership;

THAT if any one or more of the partners for the time being shall be expelled, or shall retire from the said copartnership, in pursuance of the provisions hereinbefore for that purpose contained, or if any one or more of them shall die while engaged in the said copartnership, *Then*, and in any of the said cases, and when and so often as the same shall happen, the expelled or retiring partner, his executors or administrators, or the executors or administrators of the deceased partner (as the case may be), and the continuing or surviving partners or partner, their or his executors or administrators, shall, within two calendar months next after such expulsion, retirement, or death, fix a value on the part or share of the expelled, retiring, or deceased partner, of and in the stock, capital, and effects of the said copartnership, and within twenty days after the value of such part or share shall be so fixed as aforesaid, the continuing or surviving partners or partner, their or his executors or administrators, shall execute and give to the expelled or retiring partner, his executors or administrators, or to the executors or administrators of the deceased partner (as the case may be), a bond in a penalty double the principal, conditioned for the payment of such value, with interest for the same after the rate of four pounds for one hundred pounds, by the year, to be computed from the expulsion or retirement of the expelled or retiring partner, or the decease of the deceased partner (as the case may be), in manner following (that is to say); one moiety or half part of such value at the expiration of twelve calendar months after such expulsion, retirement, or death, and the remaining moiety or half part of such value at the expiration of eighteen calendar months after such expulsion, retirement, or death; *And* the interest of the said value, or of so much thereof as shall for the time being remain due, at the expiration of every six calendar months after such expulsion, retirement, or death; *And* the continuing or surviving partners or partner, their or his executors or administrators, shall also, within twenty days after the value of the share of any expelled, retiring, or deceased partner shall be so

and the amount of such value shall be secured by the bond of the continuing or surviving partners;

payable in moieties at twelve and eighteen months, with interest half-yearly:

and the continuing or surviving partner shall also give to the expelled or retiring

partner, or the executors of the deceased partner, a bond of indemnity against the co-partnership debts:

fixed as aforesaid, execute and give to the expelled, or retiring partner, his executors or administrators, or to the executors or administrators of the deceased partner (as the case may be), another bond, in a sufficient or reasonable penalty, for indemnifying him or them, and the estate and effects of the expelled, retiring, or deceased partner (as the case may be), from and against the debts and engagements due and owing from the said copartnership, at the time of such expulsion, retirement, or death, and from and against all actions, suits, damages, and expenses whatsoever, in respect thereof; *And* the expelled or retiring partner, his executors or administrators, or the executors or administrators of the deceased partner, shall, within the said twenty days, release and assign to the continuing or surviving partners or partner, their or his executors or administrators, all his or their share, right, title, and interest, of and in and to the stock, monies, debts, and effects, belonging, due, and owing to the said copartnership, and so far as possible, empower and enable them and him to recover and receive the same.

and the expelled or retiring partner, or the executors of the deceased partner, shall thereupon release and assign his or their share and interest in the stock and effects, to the continuing or surviving partners.

That A., B., C., D., E., and F. may expel G. from the co-partnership without assigning any reason.

That if G. shall be removed under the last proviso, he shall forthwith be paid the value of his share in the copartnership, according to the then last rest:

THAT it shall be lawful for the said [A.], [B.], [C.], [D.], [E.], and [F.], or the major part of them, at any time they may think fit, and without assigning any cause or reason for so doing, to remove the said [G.] from the the said copartnership, by giving a notice in writing to that effect to the said [G.], or leaving the same at his usual place of abode; *And* in case any such notice shall be so given or left as last aforesaid, the said copartnership shall from that time cease and determine, as to the said [G], but not as to any other partner.

THAT in case the said [G.] shall be removed from the said copartnership, under or by virtue of the proviso lastly hereinbefore contained, the continuing partners shall, immediately thereupon, (subject and without prejudice to any mortgage which shall have been made by the said [G.], in pursuance of the power hereinbefore for that purpose given him), pay to the said [G.], his executors or administrators, such a sum as shall be equal to the amount of the capital of the said [G.] in the said copartnership at the time of such his expulsion, as it appears from or stands in the said books of the said copartnership, after deduct-

ing from the same all such sums of money as the said [G.] may then owe to the said copartnership; *And* also shall, at the same time, if required so to do, execute and give to the said [G.], his executors or administrators, a bond, in a sufficient penalty, for indemnifying him and them against the debts and engagements of the said copartnership, at the time of such expulsion, and all claims and demands on account thereof.

and have a bond of indemnity against the copartnership debts:

That, upon payment of such sum as last aforesaid, the said [G.], his executors or administrators, shall, at the expense of the said copartnership, make, do, and execute all such releases, assignments, and other acts and deeds, as shall be required or deemed advisable, for vesting in the continuing partners, their executors or administrators, all the share, right, title, and interest, of the said [G.], his executors or administrators, of, in, and to the stock, monies, debts, and effects of the said copartnership, and for enabling them to recover and receive the same.

and thereupon G. shall assign his share in the copartnership to the continuing partners.

That if any partner shall become lunatic, the other partners may expel him from the copartnership, and may purchase his share at a valuation:

That if any of the said partners shall at any time during his continuance in the said copartnership, be found lunatic, then and in every such case it shall be lawful for the others of the said partners, or the major part of them, at any time thereafter, by any writing under their hands, to determine and dissolve the said copartnership, as to the partner who shall so for the time being be found lunatic as aforesaid, and to exclude him from all future benefit thereof, and to take to and purchase his share in the copartnership capital and effects on the footing of the last valuation or rest which shall have been made thereof; or if there shall have been no such valuation or rest made within twelve calendar months immediately preceding the determination or dissolution of the said copartnership as last aforesaid, then on the footing of a valuation to be made by the continuing partners and the committee of the estate of the partner so for the time being found lunatic, or by arbitrators to be appointed by them respectively, in like manner as is hereinafter provided with respect to the settlement by arbitration of any difference or dispute which may arise under or by virtue of these presents, and that the value of such share to be so ascertained as aforesaid, together with interest thereon, after the rate of five pounds

such value to be secured and paid in like manner as is

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hereinbefore provided with respect to the value of the share of a retiring, expelled, or deceased partner.

for one hundred pounds by the year, to be computed from the then last valuation or rest, or the determination or dissolution of the said copartnership as last aforesaid (as the case may be), shall be secured to the committee of the estate of the partner so for the time being found lunatic, by the joint and several bond or obligation in writing of the continuing partners, at such times and in such manner as hereinbefore is mentioned, with respect to the payment of the value of the share in the copartnership effects of any partner who shall retire, or be expelled from the said copartnership, or die during the continuance thereof, as hereinbefore is mentioned.

That after the death, retirement, or expulsion of any partner, the other partners shall continue the copartnership upon the like terms.

THAT after the decease, or retirement, or expulsion of any of the said partners as aforesaid, the surviving or other partners shall, during the remainder of the said copartnership term of years, carry on the business of the said copartnership upon the same terms, and with, under, and subject to the same powers, provisoes, stipulations, and agreements as are hereinbefore contained, or as near thereto as circumstances will admit of.

That upon the entire or partial dissolution of the said copartnership, notice thereof shall be inserted in the London Gazette, &c.

THAT upon the entire (*m*) or partial dissolution of the said copartnership, under any of the provisions hereinbefore contained, such notice thereof shall be inserted in the London Gazette, and sent to the customers of the said copartnership, as the partners for the time being dissolving the same shall think expedient and proper; *And* that if any of the partners for the time being shall neglect or refuse for the space of three days after being thereunto requested by

(*m*) Where there is no clause for entirely dissolving the copartnership, the following form may be used:

That notice of a partial dissolution by retirement or expulsion, shall be inserted in the London Gazette, &c.

"THAT upon the retirement or expulsion of any partner from the said copartnership, under the provisions hereinbefore contained, such notice of the determination or dissolution of the said copartnership as to the retiring or expelled partner, shall be inserted in the London Gazette, and sent to the customers of the said copartnership, as the continuing partners for the time being shall think expedient and necessary; *And* that if any partner who shall so retire or be expelled shall neglect or refuse for the space of three days after being thereunto requested," &c.

the others, or any of the others of them, to sign such notice, or shall by reason of lunacy, illness, absence from the kingdom, or otherwise, be unable to sign such notice; *Then*, and in every such case, it shall be lawful for the major part of the other partners to sign such notice, in or with the name, and as the attorneys of the partner or partners who shall so for the time being neglect or refuse, or be incapable to sign the same as aforesaid.

and that if any partner shall refuse or be unable to sign such notice, the others may sign it for him.

THAT it shall be lawful for each of them the said [A. and B.] at any time after the expiration of the first seven years of the said copartnership term of years, if then engaged in the said copartnership business, by deed or writing under his hand and seal, and at any time hereafter, while engaged in the said business, by his last will and testament in writing, or any codicil or codicils thereto in writing, to nominate and appoint one of his sons to succeed to his share in the said copartnership business, and the capital or joint stock and future gains and profits thereof, and to assign, bequeath, or otherwise make over the same share to such son accordingly: Provided always, that no son of the said [A.] or of the said [B.] shall succeed to his father's share in the said business, under this present provision, unless at the time of his nomination thereto he shall be of the age of twenty-one years, and shall within one calendar month next after his nomination, signify his intention to succeed to such share, to the continuing or remaining partners, by some writing under his hand, to be given to them, or left for them, at the counting-house where the copartnership business shall for the time being be carried on (*n*).

That A. and B. may by deed or will admit their sons into the copartnership as acting partners therein, and assign or bequeath to them their shares in the capital.

(*n*) Another form.

"THAT it shall be lawful for the said [A.] at any time hereafter, while engaged in the said copartnership, to admit either of his sons and as an acting partner therein, in respect of any part not exceeding a moiety of the share of him the said [A.] of and in the gains and profits of the said copartnership business; *And* to assign, or otherwise make over to the son, who shall be so admitted, as aforesaid, a like part of the share of him the said [A.] of and in the stock, monies and effects of the said copartnership."

That one of the partners may admit his son as an acting partner, and assign him a moiety of his share therein.

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That if any son of A. or B. shall succeed to his father's share, he shall hold it on the same terms.

THAT in case any son of the said [A.] or of the said [B.] shall succeed to his father's share in the said copartnership business, under the provision lastly hereinbefore contained, he shall from that time be an acting partner in the said business, in respect of such share, and shall be entitled to such share, upon and subject to the same terms and conditions, with the same powers and privileges, and in every respect in the same manner as his father would have been entitled to the same, if he had lived and continued a partner in respect thereof, *save* and except the powers of nomination, or appointment and assignment, or bequest, lastly hereinbefore contained.

That C., D., and E. may bequeath their shares.

THAT it shall be lawful for each and every of them the said [C.], [D.] and [E.], by his last will and testament in writing, or any codicil or codicils thereto in writing, to bequeath his share in the said copartnership business, and the capital and effects thereof, and the gains and profits thereafter to arise from the same, to any person or persons whomsoever, either for his, her, or their own benefit, or as a trustee or trustees for some other person or persons.

That such legatees shall be sleeping partners.

THAT if any such bequest as last aforesaid shall be made, the person or persons to whom the same shall be made, shall be entitled to become a sleeping partner or partners in the said copartnership business in respect of the share comprised in such bequest, provided such person or persons shall be of the full age of twenty-one years, and shall within one calendar month after the decease of the party making such bequest, signify his, her, or their intention to become such sleeping partner or partners, to the continuing or surviving partners, by some writing under his, her, or their hand or hands, to be given to such continuing or surviving partners, or left for them at the counting-house where the business of the said copartnership shall for the time being be carried on.

That sleeping partners shall be entitled to their shares upon the same terms, &c. as the party from whom they derived them,

THAT if any person or persons shall under the provisoes hereinbefore for that purpose contained, become a sleeping partner or sleeping partners in the said copartnership business, in respect of any such share or shares therein as aforesaid, *Then* and in every such case, and immediately thereupon, the person or persons who shall so for the time

being become a sleeping partner or partners, shall, so far as relates to the share in respect of which he, she, or they shall have so become such partner or partners as aforesaid, stand in the place of the partner from whom he, she, or they derived the same, and shall from thenceforth to the end of the said copartnership be entitled to such share, upon and subject to the same terms and conditions, with the same benefits, powers, and privileges, and in every respect in the same manner, as the person from whom he, she, or they derived such share, would have continued entitled to the same if such last mentioned person had lived and continued a partner in respect thereof, save and except the power of bequeathing such share hereinbefore contained, and save and except as hereinafter is provided.

except the power of bequeathing the same.

That if any sleeping partner, who is a trustee for others, shall die or cease to act, a substitute shall be appointed.

That if any person who shall be a sleeping partner in the said copartnership business, as a trustee for another or others, under the provisions hereinbefore for that purpose contained, shall die during the continuance of the trust, or shall decline or become incapable to act therein, *Then* and in such case, one of the executors or administrators of the sleeping partner so dying as aforesaid, or such person as shall or may become a trustee in the place or stead of the sleeping partner so declining or becoming incapable to act as aforesaid, (as the case may be,) shall be admitted a sleeping partner in the said copartnership business in respect of the share in respect of which such person so dying, or declining or becoming incapable to act as aforesaid, was a sleeping partner; *And* shall thenceforth hold or be entitled to such share, upon the same terms and in the same manner as if he or she had been the original trustee thereof.

That the receipts of sleeping partners who are trustees for others shall be sufficient discharges to the acting trustees:

That the receipts in writing of any person who shall be admitted a sleeping partner in the said copartnership business, as a trustee for another, or others, under the provisoes hereinbefore for that purpose contained, shall be good and effectual discharges to the acting partners for the monies which shall be payable to him or her, on account of the share in respect of which he or she shall be such sleeping partner, or so much thereof as in such receipts shall be expressed or acknowledged to be received, and

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and all accounts, &c. settled by them shall be binding on the *cestuis que trust.*

that such acting partner shall not be in any manner obliged or answerable, or accountable for the misapplication or nonapplication thereof; *And* that the accounts, reckonings, transactions, matters, and things, which shall be settled, adjusted, arranged, or agreed upon between such sleeping partner or partners, as last aforesaid, and the other partners for the time being, shall be binding and conclusive upon the person or persons for whom such sleeping partner or partners shall be a trustee or trustees, and shall not afterwards be opened or unravelled by such last mentioned person or persons, upon any account or pretence whatsoever.

That sleeping partners shall not interfere in the business, but may inspect the books once a month.

THAT no person who shall become a sleeping partner in the said copartnership business, under the provisions hereinbefore in that behalf contained, shall, without the consent of the acting partner or partners for the time being, be at liberty personally to attend to, assist in, (*o*) or in any manner interfere with the management, conducting, or carrying on of the business of the said copartnership, or any part thereof, or the making out or taking the accounts thereof, save and except the annual accounts to be made and taken on the day of in every year as aforesaid, and the final accounts to be made and taken as hereinafter is mentioned; *But* every person who shall so become a sleeping partner as aforesaid shall be at liberty once in every month, but not oftener, without the consent of the acting partner or partners for the time being, to inspect and examine the account books of the said copartnership, and all letters, papers, securities, vouchers, and writings, of or belonging or relating to the business thereof, and to make abstracts or extracts of or from the same, or any of them.

(*o*) The following provision was inserted in a copartnership deed between several parties, where the concerns were of considerable magnitude, and was sanctioned by a conveyancer of eminence and great practice. Such a provision, however, seems inadmissible, except in cases where the parties are persons of the very highest integrity and character; and it may perhaps be questioned whether such a provision would be available in equity, if a case of fraud could be made out, or strongly inferred.

That on the death of a part-

"That on the death of any of the said partners for the time being,

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That upon the admission of a partner, such deeds of covenant, &c., shall be executed between the parties as counsel shall require.

THAT with all convenient speed after any person or persons shall be admitted a partner or partners in the said copartnership business, under any of the provisions hereinbefore for that purpose contained, either as an acting or sleeping partner or partners, such deeds of covenant and other deeds, acts, matters, and things, shall be prepared, made, done, and executed by and between the said parties, as counsel learned in the law shall reasonably advise or require, for placing the admitted partner or partners in the situation of the party in respect of whose share he or they shall be admitted, and for subjecting such partner or partners to the covenants and agreements herein contained, so far as the same relate to or concern the share in respect of which he or they shall be so admitted.

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ner, his personal representatives shall succeed to his share, upon certain terms.

his personal representative or representatives shall become a partner or partners, in the stead or place of the partner or partners so dying, and shall be entitled to his or their share or shares of the capital or joint stock of the said partnership, and of the gains and profits thereof, and bear a proportion of the losses of the same partnership during the then remainder of the said term of years; *And* that upon the settlement of every such annual account, the surviving partners or partner shall deliver to the personal representative or representatives of the deceased partner or partners, a statement, in writing, of the share or respective shares of the deceased partner or partners respectively, of and in the said partnership effects, and shall pay to the said personal representative or representatives a proportion of such dividend of gains and profits as shall from time to time be payable, or be declared, for or in respect of the share or shares of the deceased partner or partners; *And* that on the expiration of the said partnership, the debts and effects of the said partnership shall be collected and appropriated in the same manner as if all the partners had been then living, and the surviving partner or partners shall thereupon pay to the personal representative or representatives of the deceased partner or partners, the share or respective shares of and in the said partnership effects, or the produce thereof, to which such deceased partner or partners would have been entitled in case he or they had been living; but it is expressly declared and agreed, that the representative or representatives of any deceased partner or partners, or any persons claiming under him or them, as legatee or legatees, creditor or creditors, or otherwise, shall not be entitled to enter into, or have any access to the counting-houses, warehouses, or premises of or belonging to the said copart-

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That after the expiration of the copartnership an account shall be made of the affairs and effects thereof, and after due provision has been made for the debts due from the copartnership, the stock, &c. shall be divided between the partners in the shares in which they are respectively entitled thereto:

THAT at the expiration of the said copartnership term of years, or upon any previous dissolution or determination of the said copartnership, an account in writing shall be made by the partners for the time being, of all the stock in trade, debts, and effects, of or belonging and due and owing to the said copartnership, and also of the debts and engagements due and owing from, or to be performed by the said copartnership; *And* upon the finishing of such last mentioned account, the said partners, or the major part of them, shall make such provision for the payment and satisfaction of the debts and engagements which shall then appear to be due from, or to be performed by the said copartnership, as they shall think fit and proper, *And* subject thereto the said stock in trade, debts, and effects, of or belonging and due and owing to the said co-

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nership, or in any manner to interfere or intermeddle in the conduct or management of the partnership business or concerns, or to have access to the partnership books or accounts, or the right of inspection, or of taking or having copies of, or extracts from, the said books, or accounts, or any letters, securities, papers, or writings, matters, or things relating to the partnership, or to examine into, or investigate the grounds, principles, or mode of making out such statements; *And* on the contrary thereof, such representative or representatives, and all persons claiming under any deceased partner or partners, shall be contented and satisfied with the statements and representations of the surviving partners or partner as to such accounts, and as to all concerns and transactions relating thereto, and shall not upon any pretence or ground of fraud or omission in making out the aforesaid accounts, or even in case of any fraud or omission, or in any other respect, or on any other account, be at liberty to examine, investigate, or enquire into the partnership accounts, dealings, transactions, or affairs, or to have any reference to arbitration concerning the said accounts, errors, or frauds. Provided always, and it is hereby agreed and declared between and by the said parties hereto, that the representative or representatives of any deceased partner or partners, with the consent, in writing, of the surviving partners for the time being, or the major part of them, shall or may be at liberty to draw out of the said partnership capital or stock all or any part of the share of such deceased partner or partners respectively, upon such terms, and at such times, as the surviving partners for the time being, or the major part of them, shall determine and agree on by writing under their hands.

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partnership, and so to be included in such last mentioned account as aforesaid, shall be allotted, divided, and apportioned unto, between, and amongst the partners for the time being entitled thereto, in such lots, shares, manner and form, as the said partners, or the major part of them, shall, in their or his own discretion, think proper, and order or direct; *And*, after making such division, such instruments in writing shall be executed by the said partners, for facilitating the getting in of the debts and effects outstanding, and for indemnifying each other, touching the premises, and for vesting the sole right and property in the said respective shares and allotments of the said stock, effects, and premises, in the parties to whom the same respectively shall, upon such division, belong, and for releasing to each other all claims and demands on account of the said copartnership, as are usual in cases of the like nature.

and all necessary instruments shall be executed between the parties.

Arbitration clause.

That if any doubt, difference, or question shall at any time hereafter arise or happen between or amongst the said parties to these presents, or any of them, or between any of them and the executors or administrators of the other or others of them, or between their respective executors, administrators, or assigns, touching the construction of these presents, or any clause, matter, or thing herein contained, or any account, or rest, or valuation, or appraisement to be made, as hereinbefore is mentioned, or any other matter, cause, or thing whatsoever, in any wise relating to or concerning the said copartnership, or the business thereof, and such doubt, difference, or question shall not be settled and decided between or amongst themselves, within one calendar month next after the same shall have arisen; *Then*, and in every or any such case, and when and so often as the same shall happen, such doubt, difference, or question shall, upon the request of any of the said partners, or their, or any of their executors or administrators, from time to time be reduced into writing, and be committed or referred to the arbitration of three indifferent and competent persons, one of them to be chosen by one of the parties in difference, and another of them by the other party in difference, and the third by the two persons who shall be so first chosen, so as that such

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three indifferent and competent persons be chosen within two calendar months next after such request; *And* the award, order, or determination of the said three persons, so to be chosen as aforesaid, or any two of them, in the matter or matters referred to them, shall be binding and conclusive upon the said parties in difference, and their respective heirs, executors, administrators, and assigns, and shall be performed, observed, and kept by them accordingly, without any further suit or trouble whatsoever, so as such award, order, or determination, be made and set down in writing, under the hands and seals of such three persons, or any two of them, within the space of twenty-one days next after all the said three persons shall have been so appointed as aforesaid (*a*).

(*a*) The following clause for referring matters in dispute to arbitration, was inserted in a copartnership deed, which was settled by conveyancers of eminence. It is too long for general adoption, but may be useful in preparing a clause with like objects in a shorter form.

Arbitration clause.

"THAT if at any time during the said copartnership, or after the expiration or sooner determination thereof, any variance, controversy, dispute, doubt, question, difference or difficulty, shall arise, grow, be made, or occur, to or between the said partners, or any of them, touching or concerning the business of the said copartnership, or any covenant, agreement, clause, matter or thing contained in these presents, or on the construction of the same, or on the construction of any award to be made in pursuance of this present provision, or by reason of any irregular or improper behaviour, or the lunacy, or any other incapacity of any one or more of the said partners for the time being, then the grounds or cause of any such variance, controversy, dispute, doubt, question, difference or difficulty, shall, upon the request of any one or more of the said partners for the time being, and within seven days after the making such request, be reduced into writing, and signed by the person or persons so complaining, and be referred to the arbitration of two indifferent persons, one to be named by the person or persons taking one side of the matter in difference, and the other to be named by the person or persons who shall take the other side of the matter in difference; and that if any person or persons who shall take either side of the said difference, or being such lunatic, the committee of his estate, shall refuse to name, or to join in naming, an arbitrator, within fourteen days after notice in writing to name, or join in naming, an arbitrator, then the subject and nature of every such variance, controversy, or dispute, shall be reduced into writing, and signed by the person or persons taking the other side of the said

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THAT if any such doubt, difference, or question as aforesaid shall arise, and any of the said partners, or his or their executors, administrators, or assigns, shall, by any writing under his or their hand or hands, to be given to the other partners or partner, or their or his executors, ad-

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difference, and be referred to the arbitration of two indifferent persons, to be named by the person or persons who shall sign the writing containing the subject and nature of every such variance, controversy, or dispute; and if the arbitrators to be so named as aforesaid, cannot agree on an award, then they shall, by writing under their hands, appoint an indifferent person to be umpire; *And* every such reference to arbitration shall be made within twenty days next after any such variance, controversy, dispute, or question shall arise, or be moved: *And further*, that the award, order, or determination, which shall be made by the said arbitrators, or their umpire, touching or concerning the premises referred to them or him, shall be final and conclusive to the partners, or persons between whom such reference shall be made as aforesaid, and their respective heirs, executors, and administrators: *And further*, that such referees, or their umpire, (provided such matter be expressly specified in the notice of reference, and two at least of the partners for the time being, while there shall be three or more partners, shall sign such notice) shall have full power and authority, if they or he shall think fit, and without any reason to be assigned for that purpose, to dismiss any one or more of the parties as between whom such difference shall be made from the said partnership, or to dissolve the said partnership, and to make any orders, rules, and regulations, prescribing the time and the terms of such dismissal or dissolution, and also the time and manner in which the accounts relating to the partner or partners who shall be dismissed as aforesaid, or the accounts of the said partnership, (if the same is to be dissolved) shall be settled and adjusted, and the balance of the share or shares thereof paid to or by the partners respectively, as the case shall require: *And also*, that the person or persons who shall be a party or parties to such reference on the one part, shall enter into a bond of reference with the person or persons who shall be a party or parties to the said reference of the other part, and in the usual form, stand, obey, observe, and keep the same determination when made, without any further suit or trouble whatsoever, so as such arbitrators shall make their award in writing under their hands, or appoint an umpire within thirty days next after such respective references to them, and so as each respective umpire shall make his determination in writing under his hand within ten days next after he shall be appointed an umpire: *And also*, that each and every bond of award or deed of reference shall contain a clause of

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ministrators, or assigns, or left at his or their usual or last known place or places of abode in England, request such other partners or partner, or their or his executors, administrators or assigns, to refer such doubt, difference, or question to arbitration, and to nominate some indifferent

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covenant or agreement that the reference or submission to be contained in that bond or deed shall or may be made a rule of his Majesty's Court of King's Bench at Westminster, on the application of either of the parties to the same reference, his or her executors or administrators: *And also*, that no suit at law or bill in equity shall be brought, commenced, sued, or prosecuted against the said arbitrators thereby appointed, or their umpire, touching or concerning any of the matters or things to be referred to them or him, or touching or concerning their or his award or determination: *And also*, that the several and respective parties to such reference shall or will submit or consent to be examined upon oath by the said arbitrators, or their umpire, for the discovery of any of the dealings or transactions of the said partnership, relating to the matters in difference, and referred to the award and determination of the same arbitrators or umpire. AND IT IS HEREBY FURTHER AGREED, that no suit at law or in equity, upon or by virtue of these presents, or any clause or article herein contained, shall or may be commenced or prosecuted by either of the said partners, his heirs, executors, or administrators, against the other or others of them, his or their heirs, executors, or administrators, before the partner or partners, his or their heirs, executors, or administrators, who is or are to be a party or parties, defendant or defendants to such suit or suits, shall have declined to refer the matters in difference to arbitration, pursuant to the agreement hereinbefore contained, or the referees, or their umpire, shall have declined or omitted to make any award or determination within the respective times hereby limited to them and him in that behalf. AND LASTLY, that when any such difference shall arise between any two or more of the said parties for the time being, each of the said partners for the time being shall have notice thereof, by writing to be left, or by letter to be addressed, at the place of his last or most general residence in England, to the intent that the said partners respectively may have the option of taking a part in the matters in difference on either side; *And* that the partner or partners, or person or persons, who shall refuse, or decline to become a party to such reference, shall be bound and concluded by all the proceedings thereon, and by the award or determination of the arbitrators, or their umpire, in the same manner, to all intents and purposes, as if he or they had been a party or parties to the matters in difference, concerning which such award or determination shall be made, and had joined in referring the same. IN WITNESS," &c.

and competent person to be an arbitrator therein on his or their behalf, and the person or persons to or for whom such request shall be so given or left as aforesaid, shall, for the space of two calendar months next after such request, refuse or neglect so to do, *Then*, and in such case, and so often as the same shall happen, it shall and may be lawful to and for the person or persons giving or leaving such request, by writing under his or their hand or hands, to choose and appoint some indifferent and competent person to act as an arbitrator on the part of the party or parties so refusing or neglecting as aforesaid, *And* the two persons who shall be so chosen arbitrators as last hereinbefore is mentioned, shall thereupon, or in a reasonable time thereafter, choose an umpire between them, and the award or determination of such arbitrators or umpire, as last hereinbefore is mentioned, in the matters which shall be so referred to them, as aforesaid, shall, to all intents, effects, constructions, and purposes, be as valid, effectual, binding, and conclusive, as if the person chosen by the arbitrator named by the person or persons so giving or leaving such request as aforesaid, had been chosen by the person or persons to or for whom such request shall have been given or left.

And that for the further and better enforcing the observance and performance of every or any award, order, or determination, to be so made as aforesaid, the reference or submission for or in respect of the same, shall from time to time be made a rule of one of his Majesty's Courts of the King's Bench, Common Pleas, and Plea side of the Exchequer, according to the direction of the statute in that case made and provided.

And each and every of them the said [A.], [B.], [C.], [D.], [E.], [F.], and [G.], for the due observance and performance of all and singular the covenants, clauses, and agreements hereinbefore contained, on his part and behalf to be observed and performed, doth hereby bind himself, his heirs, executors, and administrators, to the others, and each and every of the others of them, their and his executors and administrators, in the sum of pounds of lawful money of Great Britain and Ireland. In witness, &c.

BETWEEN ATTORNIES AND SOLICITORS; SURGEONS, &c.

ARTICLES *of* COPARTNERSHIP *between* ATTORNIES *and* SOLICITORS, *with Variations applicable to* SURGEONS *and* APOTHECARIES.

ARTICLES OF AGREEMENT, made and entered into this day of , BETWEEN [A.] of, &c. of the one part, and [B.] of, &c. of the other part.

Parties.

Mutual covenants, as follows;

WHEREBY, in consideration of the mutual trust and confidence which the said [A.] and [B.] have and repose in each other, Each of them the said [A.] and [B.] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the other of them, his executors and administrators, in manner following (that is to say);

That A. and B. will be partners for —— years;

THAT they, the said [A.] and [B.], shall and will become and remain partners in the profession or business of attornies (*a*), solicitors, and conveyancers, from henceforth, for and during the term of years, if both of them the said [A.] and [B.] shall so long live. (*b*)

That the firm shall be A. and B.

THAT the style or firm of the said copartnership shall be "[A.] and [B.]" (*c*)

That the business shall be carried on at ——.

THAT the business of the said copartnership shall be carried on at , or at any other place or places, as the partners shall hereafter agree upon.

That —— *l.* shall be the capital, and shall be brought in in equal shares, and be employed in the business.

THAT the sum of pounds shall be the capital of the said copartnership, and shall be contributed by the said parties in equal shares; *And* that the said capital, and the profits arising from the business of the said copartnership shall (subject as hereafter is mentioned) be used and employed in the said business.

SURGEONS, &c.

(*a*) "In the profession or business of *surgeons, apothecaries,* and *men-midwives.*"

(*b*) If it be intended that the copartnership should cease after a given number of years, on notice by either party, see a power to that effect, *ante,* p. 151.

(*c*) In a copartnership deed between attornies, where the partners suc-

BETWEEN ATTORNIES AND SOLICITORS; SURGEONS, &C.

That rent of offices, wages of clerks, &c. shall be paid by the copartnership.

THAT the rent of chambers or offices, and all taxes and other outgoings payable in respect thereof, and the wages and salaries of clerks and servants, and all expenses (*d*) and losses of the said business, shall be defrayed and borne by and out of the capital and profits of the said copartnership; or, if such capital and profits shall become deficient, then, by the said parties, out of their respective separate estates, in equal shares.

That the gains shall be divided equally.

THAT the said partners shall be entitled to the net gains and profits of the business of the said copartnership in equal shares.

That each partner may take out an annual sum of —— *l.* for his own use, quarterly.

THAT in each year, during the said copartnership, it shall be lawful for each of them, the said partners, to take out of the monies, funds, and effects of the said copartnership, for his own private and separate use, the sum of pounds, by four equal quarterly portions.

That books of account shall be kept.

THAT proper books of accounts shall be kept by the said partners, and that entries shall be made therein of all such matters, transactions, and things, as are usually written and entered into books of account kept by persons engaged in concerns of a similar nature.

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ceeded to a practice, and the party selling the practice covenanted (amongst other things) to allow his name to be used for the first two years, the following clause was inserted:—

Name or style of firm.

"THAT during the first two years of the said copartnership, the firm or style thereof shall, under the authority for that purpose given by the said [A.] in and by the said hereinbefore recited indenture as aforesaid, be '[A.], [B.], and [C.]'; *And* that during the remainder of the said copartnership, the firm or style thereof shall be '[B.] and [C.]'"

SURGEONS, &C.

(*d*) In copartnership deeds between medical men, it is not unusual to provide that the senior partner shall, at the expense of the copartnership, have a carriage for the purpose of visiting the patients; in which case the following clause may be introduced:

That the senior partner shall be allowed a chariot, horses, &c. at the expense of the copartnership.

"THAT the said [A.] shall be allowed out of the monies and effects of the said copartnership, an annual sum of pounds, for the use or hire of a chariot, coachman, and pair of horses, for the purpose of visiting the patients of the said copartnership."

BETWEEN ATTORNIES AND SOLICITORS; SURGEONS, &c.

That the books of account and all letters and other writings relating to the business, shall be kept at the place where the business is carried on; and that each partner shall have free access to the same.

THAT the said books of account, together with all deeds, evidences, securities, letters, documents, papers, and writings, which shall from time to time be in the custody of or concern the said copartnership, shall remain and be kept at the chambers or offices where the business of the said copartnership shall, for the time being, be carried on, and that each of the said partners shall have free access to inspect, cast up, examine, peruse, and make copies or extracts of or from the same, without any hindrance or denial of or by the other of them.

That neither of the partners shall take any of the papers away from chambers, except in the ordinary course of business.

THAT neither of the said partners shall, without the consent of the other of them, detain, or take, or deliver away from the said chambers or offices, any deeds, evidences, securities, letters, documents, papers or writings, which shall from time to time be in the custody of or concern the said copartnership, save and except in the regular and ordinary course of business, or in compliance with some request or demand which might be enforced in some court of law or equity.

That all ready-money, bills, &c. shall be paid into the banking-house of Messrs. and Co.

THAT all ready money (*e*), bills, notes, checks, and drafts, which shall from time to time be received by the said partners, or either of them, on the proper account of the said copartnership, shall forthwith be paid into the banking-house of Messrs. and Company, in or of other the bankers for the time being of the said copartnership, to the credit of the said copartnership; *And* that all ready money, bills, notes, checks, and drafts, which shall from time to time be received by the said partners, or either of them, for or on behalf of any client or clients of the said copartnership, or any other person or persons, and which shall not be forthwith paid over to such client or clients, or other person or persons, shall,

(*e*) In partnership deeds, between surgeons and apothecaries, provisions in regard to bills, notes, &c. will in most cases be unnecessary; and a short clause to this effect will be sufficient.

That the cash shall be kept at ——;

"THAT the cash of the said copartnership, beyond what may be sufficient for current expenses, shall be kept at the banking-house of Messrs. and Company, or at such other place or places as the said partners shall agree upon."

BETWEEN ATTORNIES AND SOLICITORS; SURGEONS, &c.

unless such client or clients, or other person or persons, shall direct the contrary, or unless both the said partners shall consent to the contrary, be also forthwith paid into the banking-house of the said Messrs. and Company, or of other the bankers for the time being of the said copartnership, to the credit of the said copartnership.

That on payment of bills, notes, &c. it shall be lawful for either partner to make the usual indorsements.

THAT, on payment of any bills, notes, checks, or drafts, into such banking-house as aforesaid, or to any client or clients, or other person or persons, as hereinbefore is mentioned, it shall be lawful for either of the said partners to make such endorsements on the said bills, notes, checks, and drafts, as are usual, or may be requisite in that behalf; but that for any other purpose it shall not be lawful for either of the said partners to make any endorsement upon the said bills, notes, checks, or drafts, without the consent of the other of them for that purpose first had and obtained.

That neither of the partners shall, without the other's consent, draw or accept any bills in the name of the copartnership, except for paying money to clients, or in the ordinary course of business.

THAT neither of the said partners shall, without the consent of the other of them first had and obtained, draw, make, or accept any bill of exchange, promissory note, check, or draft, in the name of the said copartnership, except for the purpose of paying to any client or clients of the said copartnership, or other person or persons, any sum or sums of money which may have been received by the said copartnership, for or on the behalf of such client or clients, or other person or persons, and also except checks or drafts drawn upon the bankers of the said copartnership, in the regular and ordinary course of business.

That the partners will be diligent.

THAT the said partners shall at all times during the said copartnership, diligently and faithfully employ themselves in or about the affairs and business thereof, and carry on, manage, and conduct the same to the best of their skill and abilities.

That each of them shall have a month's absence during the long vacation.

THAT each of the said partners shall be at liberty, during the long vacation in each year, to leave town for the space of one calendar month, making proper arrangements for the carrying on, during his absence, of the business of the said copartnership, which shall, for the time being, be under his care and superintendence.

That each partner shall

THAT in case any expenses, losses, or damages, shall

BETWEEN ATTORNIES AND SOLICITORS; SURGEONS, &c.

be answerable for losses arising from his own negligence.

through the gross or wilful negligence or default of either of the said partners, be incurred or sustained in carrying on the business of the said copartnership, or in anywise relating thereto, the partner through whose negligence or default such expenses, losses, or damages shall have been incurred or sustained, shall pay and make good such expenses, losses, or damages out of his separate estate, and save, defend, keep harmless, and indemnified the other partner, his executors or administrators, and his and their estate and effects, whatsoever and wheresoever, and the stock, monies, and effects of the said copartnership, of and from the same, and all actions, suits, claims, and demands whatsoever for or on account thereof.

That if the partners are appointed receivers, their salaries as such shall form part of the profits.

THAT if either of the said partners shall at any time during the continuance of the said copartnership, be appointed receiver of the rents and profits, or other annual produce, of any estate or property which shall belong or be made a security to any client or clients, or other person or persons, the salary to which the partner so for the time being appointed receiver as aforesaid shall be entitled as such receiver, shall be deemed part of the profits of the said copartnership.

That the said partners shall be just, and render faithful accounts.

THAT each of the said partners shall be just and faithful to the other of them in all transactions, matters, and things relating to the said copartnership, and shall, whenever thereunto requested, give and render true and correct accounts thereof.

That neither of them shall engage the credit of the copartnership, except for the benefit thereof.

THAT neither of them the said partners shall without the previous consent in writing of the other of them, employ any of the monies or effects belonging to the said copartnership, or engage the credit thereof, in any matter or thing, except upon the account and for the benefit of the said copartnership.

That the partners shall not engage in any trade.

THAT *neither of the said partners shall during the copartnership, engage in any speculation, trade, or business, without the other's consent.* *See* ante, *p.* 123.

That neither of the said partners shall become bound as bail, or do any act whereby the copartnership effects may be seised.

THAT neither of the said partners shall enter into any bond, or become bound, as bail, with or for any person or persons whomsoever, nor do or execute any act, deed, or thing whatsoever, whereby the other of them, or the monies or effects of the said copartnership, shall or may be charged, attached, or affected.

BETWEEN ATTORNIES AND SOLICITORS; SURGEONS, &C.

That each partner shall pay his separate debts, and indemnify the other.

THAT *each of the said partners shall punctually pay his separate and private debts, and indemnify the copartnership effects from all claims on account thereof.* *See* ante, pp. 126 and 176.

THAT each of them the said partners shall at his own expense, between the and days of November in every year, during the continuance of the copartnership, or otherwise as occasion shall require, take out and procure the license or certificate which is or shall be necessary for enabling him to act and practise as an attorney or solicitor.

That if either partner shall release any debt, without receiving the full amount, he shall make good the difference to the copartnership.

THAT neither of the said partners shall, without the consent of the other of them, release or discharge any debt or debts, or sum or sums of money, which shall be due and owing to the said copartnership, without receiving the full amount of such debt or debts, or sum or sums; *And* in case either of the said partners shall at any time act contrary to this present stipulation and agreement, he shall thereupon, out of his separate estate, pay or make good to the said copartnership, so much of the debt or debts, or sum or sums, which shall so for the time being be released, as shall not have been received.

That yearly accounts shall be made,

THAT the said partners shall on the day of in every year, during the said copartnership, or within twenty days thereafter at the farthest, join in making and stating a true, plain, and perfect account and reckoning in writing of and concerning all business and transactions whatsoever relating to the said copartnership, and of and concerning all monies, debts, and effects, which shall for the time being be due and owing, or belonging to them, in respect of the said copartnership, and of and concerning all debts which they the said partners shall then owe to any person or persons whomsoever, in respect of the said copartnership; *And* after payment and deduction of all monies, debts, and expenses then due and owing, or incurred, from or by the said copartnership, what shall appear to have been the net gains and profits of the said copartnership, during the preceding year, or so much thereof as shall, for the time being, have been collected and got in, shall, after deducting the sums which shall have been previously taken

and profits divided.

BETWEEN ATTORNIES AND SOLICITORS; SURGEONS, &C.

out by the said partners, in respect of the annual sums of pounds hereinbefore mentioned, be taken out by, and divided between, the said partners, in equal shares and proportions.

That neither of the partners shall employ counsel without the other's consent, except by the direction of clients;

THAT neither of them the said [A.] and [B.] shall, during the continuance of the said copartnership, consult or employ any counsel, conveyancer, or pleader, in or about the business of the said copartnership, without the consent of the other of them, except by the express direction or instructions of the client or clients on whose behalf the business, in reference to which such consultation or employment may be necessary, shall be transacted; *And* that if either of them the said [A.] and [B.] shall, at any time, act contrary to this present stipulation and agreement, then and in every such case, the partner for the time being so acting, shall forthwith pay and discharge the fees which shall be incurred in reference to such consultation or employment, by and out of his separate estate, and indemnify the other partner therefrom; *And* if he shall neglect or refuse so to do on being thereunto requested, it shall be lawful for the other partner to pay the same, and place the amount thereof to the debit of the account of the offending partner with the said copartnership.

and if either of them shall do so, he shall pay the fees out of his separate estate.

That neither of the partners shall take articled clerks without the other's consent; and that the fees received with articled clerks shall be equally divided.

THAT neither of them the said [A.] and [B.] shall, during the continuance of the said copartnership, without the consent of the other of them, take any articled-clerk to be employed in the business of the said copartnership; *And* that the fees or premiums which shall be received from or with any articled-clerk, shall be deemed part of the profits of the said copartnership, and be divided between the said [A.] and [B.], in equal shares.

That neither of the partners shall hire or dismiss clerks without the other's consent.

THAT neither of them the said [A.] and [B.] shall, during the continuance of the said copartnership, without the consent of the other of them, hire or engage any clerk, or other person, to be employed in the affairs and business of the said copartnership, or without the like consent, dismiss or discharge any such clerk or other person from his employment.

That in case either of the partners shall

THAT if either of the said partners shall, at any time, during the continuance of the said copartnership, *be and*

BETWEEN ATTORNIES AND SOLICITORS; SURGEONS, &c.

remain out of the kingdom for three calendar months, without the consent of the other of them, or become bankrupt, or do any act whereby or in consequence whereof he shall be liable to be struck off the rolls of attornies and solicitors, or have notice of a motion or application to the Court of King's Bench for that purpose, *or draw notes in the name of the said copartnership*, &c. (see p. 180) *It* shall be lawful for the other of the said partners, by giving notice in writing to that effect to the partner so offending in the premises, or leaving such notice at his usual or last known place of abode in England, to determine and dissolve this present copartnership; *And* in case he shall give or leave such notice, the said copartnership shall cease and determine from the time when such notice shall be so given or left.

leave the kingdom, or become bankrupt, &c. the other partner may dissolve the copartnership.

THAT if the said copartnership shall be dissolved, under the provision lastly hereinbefore contained, the partner whose conduct shall have occasioned such dissolution, shall not be at liberty, during the remainder of the said copartnership term of years, to act or practise (*f*) in the profession or business of an attorney, solicitor, or conveyancer, or any of them, or in any matter or thing connected there-

That if the copartnership shall be dissolved under the provision hereinbefore contained, the partner through whose conduct the same shall

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(*f*) In copartnership deeds between surgeons, &c. where the junior partner comes in as a purchaser, it is usual to provide that if the senior partner shall survive the copartnership term, he shall not afterwards practise within a certain distance.

"THAT if the said copartnership term of years, shall expire in the lifetime of the said [A.], the said [A.] shall, upon the expiration thereof, by bond, covenant, or otherwise as counsel shall direct, oblige himself to the said [B.] his executors or administrators, not to practise, exercise or carry on, either alone or with or for any other person or persons, the profession or business of a surgeon, apothecary and man-midwife, or any of them, within miles of aforesaid, for the term of years from thence next ensuing; and, in the event of his infringing or acting contrary to the said agreement, to pay to the said [B.] his executors or administrators, the sum of pounds, as or by way of stated or liquidated damages."

That if [A.] survives the copartnership term, he shall engage no to practise as a surgeon, &c. within ——— miles of ——— for the term of ——— years.

BETWEEN ATTORNIES AND SOLICITORS; SURGEONS, &c.

with, for or on the behalf of any person or persons, for or on the behalf of whom the said copartnership shall or may at any time have been employed or engaged; *And* that if he shall at any time act contrary to this stipulation and agreement, *Then* and in every such case, and immediately thereupon, he shall forfeit and pay to the other of the said partners, his executors or administrators, the sum of pounds, as or by way of stated or liquidated damages; *And* shall also at any time, when thereunto requested, give and execute to the said other partner, his executors or administrators, a bond, in a sufficient and reasonable penalty, for securing the due observance and performance of this agreement.

be dissolved, shall not, during the remainder of the copartnership term, be concerned as attorney, &c. for any person for whom the copartnership shall have been concerned.

That upon the determination of the copartnership, a final account shall be made; and, upon payment of the debts and engagements of the copartnership, the surplus, stock, &c. shall be divided between the partners in equal shares.

THAT within two calendar months after the expiration or other determination of the said copartnership, an account in writing shall be stated and settled between the said partners respectively, or their respective executors or administrators, of all monies, debts, and effects of or belonging to, and all debts and monies due and owing from or by the said copartnership; *And* that upon the finishing of such last mentioned account, the said partners respectively, or their respective executors or administrators, shall make due provision for the payment and satisfaction of the debts and engagements which shall then appear to be due and owing from or by the said copartnership, and the balance of the said copartnership monies, debts, and effects, to be included in such last mentioned account, shall, after making such provision as aforesaid, be divided between the said partners respectively, or their respective executors or administrators, in equal shares; *And* that after making such division, such instruments in writing shall be executed between and by the said partners respectively, or their respective executors or administrators, for facilitating the getting in of the debts and effects outstanding, and for indemnifying each other touching the premises, and for vesting in each other the respective shares in the said copartnership monies, debts and effects, to which he or they shall upon such division be entitled, and for releasing to each other all claims and demands on account of the said copartnership, as are usual in cases of the like nature.

BETWEEN ATTORNIES AND SOLICITORS; SURGEONS, &c.

That if a partner dies during the copartnership, the survivor shall take the articled clerks.

THAT if either of the said partners shall die(*g*) during the continuance of the said copartnership, and shall at the time of his decease have any articled clerk or articled clerks, the other of the said partners shall (except so far as he may be prevented by other engagements) accept and take an assignment of such clerk or clerks, for the then remainder of the term or terms for which he or they shall have been articled, without requiring any further premium or consideration for so doing.

Arbitration clause.

THAT if at any time during the said copartnership, or after the end thereof, any dispute or controversy shall arise between the said parties, or between one of them, and the executors or administrators of the other of them, or between their respective executors or administrators, concerning any of the clauses, covenants, and agreements herein contained, &c. *Usual Arbitration Clause*, see p. 129, 148. IN WITNESS, &c.

SURGEONS, &c.

(*g*) In a partnership deed between surgeons and apothecaries, where it was agreed that the executors of a deceased partner should receive for the remainder of the copartnership term, a fourth part of the profits' the following clause was inserted:—

That if either partner shall die during the copartnership term, the survivor shall pay to his executors a yearly sum, equal to one-fourth of the last year's profits, for the remainder of the term.

"THAT if the said copartnership shall be determined by the decease of either of the said partners, before the expiration of the copartnership term of years, the surviving partner shall pay to the executors or administrators of the deceased partner, during the then remainder of the said copartnership term, if the surviving partner shall so long live, such a yearly sum of money, as shall be equal in amount to one fourth-part of the net gains and profits which shall have arisen, or been made, from the business of the said copartnership, during the year immediately preceding the decease of the deceased partner, and so in proportion for any less time than a year; such yearly sum to be paid by equal half yearly portions, and the first payment thereof to be made at the expiration of six calendar months next after the decease of the deceased partner."

DEED FOR CONTINUING A PARTNERSHIP.

Deed *for* Continuing *a* Partnership *for a further Term, upon the like Conditions.*

THIS INDENTURE, made the day of , &c. Between [A.] of, &c. of the first part; [B.] of, &c. of the second part; [C.] of, &c. of the third part; and [D.] of, &c. of the fourth part. Whereas by an indenture bearing date on or about the day of , and made, or expressed to be made, between the said [A.] of the first part; the said [B.] of the second part; the said [C.] of the third part; and the said [D.] of the fourth part; *It was witnessed*, that each of them the said parties thereto, did thereby covenant and agree with and to the others and each of the others of them, and their and his executors and administrators, that they the said parties thereto, would be and continue copartners in the trade, mystery, and business of lead merchants, and in the manufactory and sale of all articles and things appertaining to the lead trade, and also in all such other trades, arts, mysteries, or businesses, as the partners for the time being, or the major part of them in value, should agree on, for the term of fourteen years from thence next ensuing, upon the terms and conditions, and subject to the regulations, stipulations, provisions, and agreements thereinafter expressed or declared and contained. And whereas the said [A.], [B.], [C.], and [D.], are respectively desirous that the copartnership now existing between them under the said hereinbefore recited indenture, should not expire with the copartnership term of fourteen years therein and hereinbefore mentioned, which will expire on the day of , now next ensuing; but that the same should be continued and carried on for a further period of seven years, upon the same terms and conditions, and subject to the same regulations, stipulations, provisions, and agreements in every respect as are in and by the said hereinbefore recited indenture mentioned and expressed; *And* for that purpose the said parties hereto have agreed to enter into the covenants hereinafter on their

Parties.

Recital of the deed of copartnership;

And the desire of the partners to continue the partnership for a further term of seven years;

And the agreement of the parties to enter into the covenants after contained.

DEED FOR CONTINUING A PARTNERSHIP.

parts contained. Now THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, *It is hereby agreed and declared* between and by the said parties hereto, and each of them the said parties hereto, so far as concerns the acts and deeds of himself, and of his heirs, executors, and administrators, but not further or otherwise, *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the others of the said persons parties hereto, and each of them, and their and his executors and administrators, that they the said [A.], [B.], [C.], and [D.], shall and will continue and be copartners in the copartnership trade or business in which they are now engaged under the said hereinbefore recited indenture, from the said day of now next, to the day of , which will be in the year 18 , upon the same terms and conditions, and subject to the same regulations, stipulations, provisions, and agreements in every respect, as are expressed and contained in and by the said hereinbefore recited indenture, and in the same manner as if the said copartnership term of fourteen years did not expire till the said day of , 18 ; *And* shall and will till that time observe, perform, and keep the said conditions, regulations, stipulations, provisions and agreements, in like manner as if the same were repeated or inserted in these presents. IN WITNESS, &c.

Testatum clause.

Each partner covenants with the others, that they will continue the copartnership for seven years, upon the like terms.

ADMISSION OF A PARTNER'S SON INTO THE BUSINESS UNDER A POWER.

DEED *for* ADMITTING *a Son of one of the Partners into the Copartnership Business, pursuant to a Power for that purpose contained in the Deed of Copartnership; and for Assigning to such Partner, a Moiety of his Father's Share in the Copartnership Effects.*

Parties.

THIS INDENTURE, made, &c. BETWEEN [A.] of, &c. of the first part; [B.] of, &c. of the second part; [C.] of, &c. of the third part; [D.] of, &c. of the fourth part; and [E.] of, &c. of the fifth part; WHEREAS by an indenture bearing date on or about the day of , and made or expressed to be made between the said [A.] of the first part; the said [B.] of the second part; the said [C.] of the third part; and the said [D.] of the fourth part; the said parties thereto did agree to become copartners in the trade or business of , for and during the term of years, to be computed from the day of the date of the same indenture, upon, under, and subject to the covenants, conditions, stipulations, and agreements therein expressed and contained; *And* by the said indenture it was (amongst divers other things) agreed that the capital of the said copartnership should consist of the manufactory and premises at aforesaid, which had been assigned *In* trust for the said copartnership, as therein is mentioned, and the machinery, implements, utensils, stock in trade and effects, which were then in and about the said manufactory and premises, and also of a sum of pounds, which had been brought into the business by the said partners, as in the said indenture is mentioned; *And* that the said capital and the net gains and profits which should arise from the business of the said copartnership, should belong to the said partners, in the proportions following, (that is to say); two fifth parts or shares to the said [A.], and one fifth part or share thereof to each of them the said [B.], [C.] and [D.]: *And* by the said indenture, it was agreed that it should be lawful for the said [A.], at any time thereafter, while he should be engaged in the said copartnership, to admit his son

Recital of the deed of copartnership, whereby the parties agreed to become copartners in the business of —— for —— years;

that the capital should consist of a manufactory and premises, and the machinery, &c. in or about the same, and of a sum of ——*l.*;

that the partners should be entitled thereto as follows: *viz.* A. to two-fifths, and B., C., and D. to one-fifth each;

that A. may admit one of his sons as an acting partner in the copart-

ADMISSION OF A PARTNER'S SON INTO THE BUSINESS UNDER A POWER.

the said [E.], or any other of his sons, as an acting partner therein in respect of any part, not exceeding a moiety of the share of him the said [A.], of and in the gains and profits of the said copartnership business; and to assign, or otherwise make over to the son, who should be so admitted as aforesaid, a like part of the share of him the said [A.] of and in the stock, monies, debts, and effects of the said copartnership; *And* that if any son of the said [A.] should be admitted into the said copartnership, under or by virtue of the last mentioned provision or agreement, the son who should be so admitted should thenceforth be entitled to the share in the said copartnership, in respect of which he should be so admitted, upon, and subject to the same terms and conditions, and with the same privileges and advantages, and in the same manner, in every respect, as the said [A.] would have continued entitled to the same share, if he had remained a partner, in respect thereof.

nership, and appoint him a moiety of his share therein.

And that if any son should be so admitted, he should hold the share to which he should be admitted upon the same terms as A. would have held the same.

AND WHEREAS the said [A.] hath agreed, in pursuance of the provision for that purpose contained in the said hereinbefore recited indenture, and with the privity and approbation of the said [B.], [C.], and [D.], to admit his son the said [E.] into the copartnership established or created by the said hereinbefore recited indenture, as an acting partner therein, in respect of one of the said two-fifth parts or shares of him the said [A.] of and in the net gains and profits of the said copartnership business; and he hath agreed, in consideration (*a*) of the natural love and affection which he hath and beareth for and towards the said [E.], and for his advancement and settlement in the world, to assign and make over to him the said [E.] for his own use and benefit, one of the said two-fifth parts or shares of him the said [A.] of and in the stock, monies, debts, and effects of the said copartnership; AND WHEREAS for the purpose of carrying the said agreement into effect, it hath been agreed that the

that A. hath agreed to admit E. as a partner in respect of one-fifth of the gains and profits;

and to assign to him a like share in the copartnership capital and effects.

(*a*) If the son is made to purchase the share, say,

Purchase.

"in consideration of the sum of pounds, to be paid by yearly instalments of pounds each, with interest for the same, in the mean time, after the rate of five pounds for one hundred by the year, and to be respectively secured by his bond, as hereinafter is mentioned."

ADMISSION OF A PARTNER'S SON INTO THE BUSINESS UNDER A POWER.

said [A.] should make the appointment and assignment hereinafter contained; and that he and the said other parties hereto should covenant with each other in such manner as hereinafter is mentioned. (*b*) NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the premises, *He* the said [A.], pursuant to, and by virtue and in exercise of the power or authority to him for this purpose given or reserved in and by the said hereinbefore recited indenture, and of every other power or authority in anywise enabling him in this behalf, and with the privity and approbation of the said [B.], [C.], and [D.] (testified by their respectively being parties to and executing these presents), *Doth* by these presents admit the said [C.] into the said copartnership, so established or created by the said hereinbefore recited indenture as aforesaid, as an acting partner therein, in respect of one of the said two fifth parts or shares of him the said [A.] of and in the net gains and profits of the said copartnership business: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance, and further performance of the said agreement, and for the considerations hereinbefore expressed, *He* the said [A.], pursuant to, and by virtue, and in exercise of the power or authority to him for this purpose given and reserved in and by the said hereinbefore recited indenture, and of every other power or authority in anywise enabling him in this behalf, and with the privity and approbation of the said [B.], [C.], and [D.], (testified as aforesaid,) *Doth* by these presents grant, bargain, sell, assign, and set over unto the said [E.], his executors, administrators, and

First witnessing part. A. admits E. as a partner, in respect of one of his two-fifths in the profits.

Second witnessing part. A. assigns to E. one of his two-fifths in the capital of the copartnership,

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(*b*) If the share is purchased, and the money secured by bond, introduce here a recital of the bond:

Bond. "AND WHEREAS, in pursuance of the said agreement in this behalf, the said [E.] hath, by his bond or obligation in writing bearing even date with these presents, become bound to the said [A.], his heirs, executors, and administrators, in the sum of pounds, subject to a condition, &c." *For a recital of a bond for payment of money by instalments, with interest*, see p. 114.

assigns, ONE of the said two-fifth parts or shares of him the said [A.], of and in the stock, monies, debts, and effects, of or belonging, or due or owing to the said copartnership established or created by the said hereinbefore recited indenture as aforesaid, and of and in the gains and profits hereafter to arise from the business of the said copartnership, *And* all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [A.], in, to, out of, or upon the same part or share, and premises: To HAVE, HOLD, receive, and take the said one-fifth part or share hereby assigned, or intended so to be, of and in the said stock, monies, debts, effects, gains, and profits, and every part thereof, unto the said [E.], his executors, administrators, and assigns, for his and their own absolute use and benefit; but nevertheless upon and subject to the same terms and conditions, and with the same privileges and advantages, and in the same manner in every respect, as the said [A.] would have continued entitled to the same part or share, if he had remained a partner in respect thereof:(*c*) AND THIS INDENTURE MOREOVER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and of the trust and confidence which the said [A.], [B.], [C.], and [D.] have and repose in the said [E.], *Each* of them the said [A.], [B.], [C.], and [D.], *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise and agree with and to the said [E.], his executors and administrators, that they the said [A.], [B.], [C.], and [D.] shall and will from henceforth, during the residue of the said copartnership term of years, be and remain copartners with the said [E.], in the said trade or business carried on by the said [A.], [B.], [C.], and [D.] in copartnership, under the said hereinbefore recited indenture as aforesaid; *And* that the said [E.] shall and may, from henceforth to the end of the said copartnership term of years, be entitled to the said one-fifth part or share hereinbefore assigned, or intended so to be, of and

ADMISSION OF A PARTNER'S SON INTO THE BUSINESS UNDER A POWER.

to be held by him upon the terms and conditions expressed in the deed of copartnership.

Third witnessing part.

Covenant from A., B., C. and D., that they will be partners with E. for the remainder of the term; and that he shall be entitled to the aforesaid share upon the same terms as A. would have held it, if he had not parted with the same.

(*c*) Covenants from A. against incumbrances, and for further assurance, would have been inserted here, if [B.] had bought the share.

ADMISSION OF A PARTNER'S SON INTO THE BUSINESS UNDER A POWER.

in the stock, monies, debts, and effects of the said copartnership, and the gains and profits thereof, upon the same terms and conditions, and with, under, and subject to the same benefits, advantages, powers, privileges, duties, covenants and agreements, as the said [A.] would have continued entitled to such part or share, if he had remained the owner thereof, or a partner in respect thereof, save and except the powers of admission and assignment, hereby respectively exercised as aforesaid; AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and of the trust and confidence which the said [E.] hath and reposes in the said [A.], [B.], [C.], and [D.]; *He* the said [E.] *Doth* hereby for himself, his heirs, executors and administrators, COVENANT, promise, and agree with and to the said [A.], [B.], [C.], and [D.], and each, and every of them, and their, and each and every of their executors and administrators, that he the said [E.] shall and will from henceforth, during the residue of the said copartnership term of years, be and remain a partner with the said [A.], [B.], [C.], and [D.] in the said trade or business so carried on by the said [A.], [B.], [C.], and [D.], under the said hereinbefore recited indenture as aforesaid, *And* that he the said [E.], his executors or administrators, shall and will, at all times hereafter, well and truly observe, perform, and keep all and every the covenants, stipulations, and agreements in the said hereinbefore recited indenture contained on the part of the said [A.], his executors or administrators, to be observed, performed, and kept, so far as the same respectively relate to, or concern the said one fifth part or share in the said copartnership business, in respect of which the said [E.] is hereby admitted a partner as aforesaid, or the said one fifth part or share in the stock, monies, debts, and effects, of the said copartnership, and the gains and profits thereof, which is hereinbefore assigned, or intended so to be. IN WITNESS, &c.

4th witnessing part.

Covenant from E. that he will be partner with A., B., C., and D., for the remainder of the term, and will keep the covenants contained in the copartnership deed, so far as they relate to the share in respect of which he has been admitted a partner.

ASSIGNMENT FROM A RETIRING OR EXPELLED PARTNER TO THE CONTINUING PARTNERS.

DEED *of* RELEASE *and* ASSIGNMENT *from a* RETIRING *Partner, to the* CONTINUING *Partners, of the Share of the Retiring Partner in the Co-partnership Stock and Effects, in Consideration of a Sum of* MONEY, *secured by Instalments by the Bond of the Continuing Partners; with Variations applicable to the Case of an* EXPELLED *Partner.*

THIS INDENTURE, made the day of , BETWEEN [*retiring partner*] of, &c. of the one part, and [*one of the continuing partners*] of, &c. and [*the other of the continuing partners*] of, &c. of the other part(*a*). WHEREAS, the said [*retiring partner*] and [*continuing partners*] have for some time past carried on, in copartnership together, the trades or businesses of chemists and druggists, in street aforesaid; AND WHEREAS, on the day of now last past, the said [*retiring partner*], with the consent of the said [*continuing partners*], did retire(*b*) from the said

Parties.

Recital of the copartnership; that one partner has retired from the copartnership,

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(*a*) If the retiring partner withdraws from the copartnership by virtue of a power contained in the articles for that purpose, the articles should be shortly recited, and the power to retire fully set out. For a recital of articles of copartnership, see *ante*, p. 210, 212, and for a power to retire, see *ante*, pp. 181 & 183.

Retirement under a power.

(*b*) In a similar assignment, upon the expulsion of a partner, the following recitals were introduced:

EXPULSION.

"WHEREAS, by an indenture bearing date the day of , and made or expressed to be made, between the said [A.] of the first part; the said [B.] of the second part; the said [C.] of the third part; the said [D.] of the fourth part; and the said [E.] of the fifth part: Each of them the said [A.], [B.], [C.], [D.], and [E.], did covenant and agree with the others, and each and

That by an indenture, &c. the parties agreed to become partners in the trade of —— for —— years, upon the terms therein mentioned.

ASSIGNMENT FROM A RETIRING OR EXPELLED PARTNER TO THE CONTINUING PARTNERS.

and agreed to take ——*l.* in satisfaction of his share, by instalments, with interest.

copartnership, *And* it was thereupon agreed that he should receive and take, in satisfaction of his share and interest in the said businesses, and the stocks, monies, debts, and effects of or belonging to the same, and the future gains and profits thereof, the sum of pounds, with interest for the same after the rate of five pounds for one hundred, by the year, to be computed from the said day of now last past, by the instalments, at the times, and in manner hereinafter mentioned (that is to say); the sum of pounds, with interest thereon after the rate, and to be computed as aforesaid, on the day of this present month of ; the sum of pounds, with interest thereon after the rate, and to be computed as aforesaid, on the day of then next following; and the sum of pounds, with interest thereon after the rate, and to be computed as aforesaid, on the day of , which will be in the year ; *And* that the payment of the same several sums of pounds, pounds, and pounds,

to be secured by the joint and several bond of continuing partners, and to execute the release hereafter contained.

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every of the others of them, their and each and every of their executors and administrators, to become copartners in the trades or businesses of a linen draper, woollen draper, and haberdasher, for the term of fourteen years, to be computed from the day of then last past, if any two of them the said [A.], [B.], [C.], [D.], and [E.], should so long live, upon, under, and subject to the conditions, provisions, stipulations, and agreements therein contained; *And* by the said indenture it was, (amongst other things), agreed that the capital of the said copartnership should consist of the sum of pounds; and that the same should be brought in by the said partners in equal proportions; and that on the day of then next ensuing, and on the day of , in every succeeding year, during the continuance of the said copartnership, a full and general account and rest should be made and taken by the said partners, of the stock, monies, debts, and effects, belonging or due and owing to the said copartnership, andof

That it was agreed that the capital should be ——*l.* and should be brought in by the partners equally, and that yearly accounts should be made and settled.

ASSIGNMENT FROM A RETIRING OR EXPELLED PARTNER TO THE CONTINUING PARTNERS.

with interest as aforesaid, should be secured by the joint and several bond of the said [*continuing partners*] ; *And* that the said [*retiring partner*] should execute and give the release and assignment, and power of attorney hereinafter respectively contained: And whereas, in pursuance and part performance of the said agreement, the said [*continuing partners*] have, by their joint and several bond or obligation in writing, bearing even date herewith, become bound to the said [*retiring partner*], his executors and administrators, in the penal sum of pounds, subject to a condition written under the said bond, for making the same void on payment, by the said [*continuing partners*], their heirs, executors, or administrators, or any of them, to the said [*retiring partner*], his executors, administrators, or assigns, of the said several sums of pounds, pounds, and pounds, with interest for the same respectively, after the rate, and to be computed as aforesaid, by such instalments, at such times, and in such manner as therein expressed, being the same in-

Recital of bond given in pursuance of said agreement.

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all such debts as should be due and owing from or by the said copartnership to any person or persons whomsoever, by reason of the said business, and of all such other matters and things as were usually comprehended in accounts taken by persons engaged in concerns of the like nature: *And* by the said indenture it was also agreed, that in case any of the said partners should at any time during the continuance of the said copartnership neglect or refuse, for the space of three calendar months, after being thereunto requested, to join in adjusting or settling any such yearly account and reckoning as thereinbefore mentioned, or should apply to his separate use any of the stock, monies, and effects of the said copartnership to the amount of pounds or upwards, or should suffer the stock, monies, and effects of the said copartnership, or any part of them, to be seized, attached, or taken in execution for, or on account of his private and separate debts or engagements, *Then*, and in any of the said cases, it should be lawful for the others of the said partners, or the

That if any of the partners shall for more than three months neglect to join in settling accounts, &c. the others might expel him.

ASSIGNMENT FROM A RETIRING OR EXPELLED PARTNER TO THE CONTINUING PARTNERS.

stalments, times, and manner, as are hereinbefore in that behalf mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises(*c*), and of the sum of ten shillings, of lawful money of Great Britain and Ireland, by the said [*continuing partners*] to the said [*retiring partner*] paid, at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), HE the said [*retiring partner*] *Doth* by these presents grant, release, assign, transfer, and set over unto the said [*continuing partners*], their executors, administrators, and assigns, ALL the part or share, estate, right, and interest whatsoever, of him the said [*retiring partner*], of, in, and to the stock in trade, debts, credits, capital, and effects, of or belonging, or due and owing, to the said copartnership between them the said [*retiring partner*] and [*continuing partners*], on the said day of now last past, and every part thereof, TO HAVE AND TO HOLD, receive, and take the said part or share, and all and singular other the premises

Testatum clause, whereby retiring partner releases and assigns his share in the copartnership effects to continuing partners.

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major part of them, by giving notice in writing to that effect to the partner for the time being offending in the premises, or leaving such notice at his usual or last known place of abode in England, to expel such partner from the said copartnership, *And* that the said copartnership should, as to the partner so for the time being offending, cease and determine, from the time when such notice should be so given or left as aforesaid; *And* that if any of the said partners should be expelled from the said copartnership under, or in pursuance of the provision thereinbefore for that purpose contained, *Then* and in such case, and when and so often as the same should happen, the expelled partner, his executors

That if any partner should be expelled, a value should be fixed on his share in the copartnership; and the amount

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Stamp.

(*c*) An assignment of a retiring partner's interest in the copartnership effects in consideration of the sum, at which such interest has been valued, is held not to be liable to the *ad valorem* duty payable on CONVEYANCES or assignments of property *on a sale*. See *Belcher* v. *Sikes*, 6 Barn. and Cress. p. 234.

ASSIGNMENT FROM A RETIRING OR EXPELLED PARTNER TO THE CONTINUING PARTNERS.

hereby granted, released, and assigned, or intended so to be, and every part thereof, unto the said [*continuing partners*], their executors, administrators, and assigns, for their own absolute use and benefit; *But* subject, nevertheless, to the payment and performance of the debts and engagements which have been contracted or entered into by, or on the behalf of the said copartnership, and which, on the said day of now last past, remained unpaid and unperformed. And the said [*retiring partner*] *Doth* hereby nominate, constitute, and appoint the said [*continuing partners*], and each of them, jointly and severally, to be the true and lawful attornies and attorney of him the said [*retiring partner*], in his name alone, or in the name of him the said [*retiring partner*] jointly with the said [*continuing partners*], or either of them, to demand, sue for, recover and receive, of and from all and every the person or persons liable to deliver or pay the same respectively, the stock in trade, monies, debts, credits, and effects, the share and interest of the said [*retiring partner*] in which

Power of attorney to get in the copartnership effects.

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or administrators, and the continuing partners, their executors or administrators, should within two calendar months next after such expulsion, fix a value on the part or share of the expelled partner, of and in the stock, monies, and effects of the said copartnership, and that within twenty days after the value of such part or share should be so fixed as aforesaid, the continuing partners, their executors or administrators, should execute and give to the expelled partner, his executors or administrators, a bond, in a penalty double the principal, conditioned for the payment of such value, with interest for the same, after the rate of four pounds for one hundred pounds by the year, to be computed from the expulsion of the expelled partner; *And* that the continuing partners, their executors or administrators, should, within the same space of time, execute and give to the expelled partner, his executors or administrators, another bond, in a sufficient or reasonable penalty, for indemnifying him or them, and his and their estate and effects, from and against the debts and engagements due and owing from the said co-

should be secured by the bond of the continuing partners;

and the continuing partners should give to the expelled partner a bond of indemnity against the copartnership debts;

ASSIGNMENT FROM A RETIRING OR EXPELLED PARTNER TO THE CONTINUING PARTNERS.

are hereby granted and released, and assigned, or intended so to be; *And* on the delivery or payment thereof, or of any part thereof respectively, to give, sign, and execute receipts, acquittances, releases, and other discharges for the same respectively; and on nondelivery and nonpayment thereof, or of any part thereof respectively, to commence, take, and adopt such actions, suits, or other proceedings at law or in equity, for recovering or compelling the payment or delivery thereof respectively, as they or he shall think proper; *And* also to adjust, settle, compound, and compromise, all accounts, reckonings, transactions, and things whatsoever, relating to the said copartnership, or the business or affairs thereof; *And* generally to do, execute, and perform any other act, deed, matter, or thing whatsoever, relating to the premises, as fully and effectually, to all intents and purposes whatsoever, as the said [*retiring partner*] might or could do in his own proper person, in case these presents had not been executed, and the said [*retiring partner*] was personally acting therein; *And* whatsoever the said [*continuing partners*], or either of them, shall lawfully do, or cause to be done,

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and that the expelled partner should thereupon release and assign his or their shares or interest in the stock and effects to the continuing partners.

partnership at the time of such expulsion, and all actions, suits, claims, and demands for or on account thereof; *And* that the expelled partner, his executors or administrators, should thereupon release and assign to the continuing partners, their executors and administrators, *All* his or their share, right, title, and interest, of and in, and to the stock, monies, debts, and effects belonging, or due and owing to the said copartnership, and so far as possible empower and enable them to recover and receive the same;

That D. having refused to join in settling the yearly accounts, and having suffered the copartnership effects to be seized for his private debts, the other partners have expelled him. That the value of his share in

AND WHEREAS the said [D.] having neglected and refused to join and concur in adjusting and settling the yearly accounts of the said copartnership, which were respectively made up and settled on the day of , in the last and present year, pursuant to the said hereinbefore recited indenture, although previously requested so to do; and having also permitted the effects of the said copartnership to be seised or attached, on account of his private and separate engagements and debts, the said [A.], [B.], [C.], and [E.], did, on the day of , in pursuance

ASSIGNMENT FROM A RETIRING OR EXPELLED PARTNER TO THE CONTINUING PARTNERS.

in or about the premises, the said [*retiring partner*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*continuing partners*], and each of them, and their and each of their executors and administrators, to allow, ratify, and confirm; *And* the said [*retiring partner*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, declare, and agree, with and to the said [*continuing partners*], and each of them, and their and each of their executors, administrators, and assigns, that he the said [*retiring partner*] hath not, at any time heretofore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said part or share, and premises hereby granted, released, and assigned, or intended so to be, are, is, can, shall, or may be in anywise impeached, charged, affected, or incumbered, save and except in respect of the debts and engagements hereinbefore referred to: *And further*, that he the said [*retiring partner*], his executors, or administrators, shall and will, from

Covenant from retiring partner that he has done no act to incumber.

and for further assurance.

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of the power or authority to them for that purpose given or reserved in and by the same indenture, expel the said [D.] from the said copartnership, by leaving a notice in writing to that effect for him at his present place of abode: AND WHEREAS the value of the share of the said [D.] of and in the stock in trade, monies, debts, and effects of the said copartnership, at the time of his expulsion from the said copartnership as aforesaid, has been fixed by the said [A.], [B.], [C.], and [E.], and the said [D.], at the sum of pounds, as they the said [A.], [B.], [C.], [E.], and [D.] do hereby respectively admit and declare; AND WHEREAS, in pursuance and part performance of the covenant and agreement in the said hereinbefore recited indenture in that behalf contained as aforesaid, the said [A.], [B.], [C.], and [E.], have, by their bond or obligation in writing, bearing even date with these presents, become jointly and severally bound to the said [D.], his executors and administrators, in the sum of pounds, subject to a condition written under the said

the copartnership has been fixed, and a bond given for payment of the amount.

That a bond of indemnity against the copartnership debts has also been given.

ASSIGNMENT FROM A RETIRING OR EXPELLED PARTNER TO THE CONTINUING PARTNERS.

time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*continuing partners*], their executors, administrators, or assigns, or any of them, make, do, and execute, or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, matters, and things, for the better and more effectually granting, releasing, assigning, and assuring of the said part or share, and premises hereby granted and released and assigned, or intended so to be, unto the said [*continuing partners*], their executors, administrators, and assigns, and for enabling them to recover and receive the same, to and for their own use and benefit, according to the true intent and meaning of these presents, as by the said [*continuing partners*], their executors, administrators, or assigns, or any of them, or their or any of their counsel in the law, shall be reasonably devised or advised and required. IN WITNESS, &c.

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bond, for making void the same on payment by the said [A.], [B.], [C.], and [E.], or any of them, or their or any of their heirs, executors, or administrators, to the said [D.], his executors, administrators, or assigns, of the sum of pounds, with interest for the same after the rate of five pounds for one hundred pounds, by the year, by the instalments, at the times, and in the manner in the said condition mentioned, being the same instalments, times, and manner, as were mentioned and directed in that behalf in and by the said hereinbefore recited indenture; AND WHEREAS, in pursuance and further performance of the covenant and agreement hereinbefore referred to, the said [A.], [B.], [C.], and [E.] have, by their bond or obligation in writing, bearing even date with these presents, become jointly and severally bound unto the said [D.], his executors and administrators, in the sum of pounds, subject to a condition written under the same bond for making void the same, if the said [A.], [B.], [C.], and [E.], or any of them, or their or any of their heirs, executors, or administrators, shall, &c. &c. *indemnify* [*D.*] *from the debts and engagements of the copartnership.*(*d*)

(*d*) For a form of such a bond, see Index, INDEMNITY.

Deed *of* Dissolution *of a* Copartnership *under a Power.* (*a*)—(*Simple Form.*)

DISSOLUTION OF COPARTNERSHIP.

TO ALL TO WHOM THESE PRESENTS SHALL COME, [A.] of, &c. [B.] of, &c. and [C.] of, &c. SEND GREETING. WHEREAS the said [A.], [B.], and [C.], have for some time past carried on the trade or business of in copartnership, upon the terms, and subject to the covenants and agreements mentioned and contained in certain articles of copartnership, bearing date the day of : NOW THESE PRESENTS WITNESS, that pursuant to, and by force and virtue, and in exercise and execution of the power or authority to them the said [A.], [B.], and [C.], for this purpose given or limited by the said articles of copartnership, and of every other power or authority whatsoever, in anywise enabling them in this behalf, THEY the said [A.], [B.], and [C.], *Do*, by this present deed or instrument in writing under the hands and seals of them the said [A.], [B.], and [C.], determine and make void the said copartnership, and the said articles of copartnership; *And* declare the same copartnership, and articles, and every covenant, agreement, clause, matter, and thing, in the said articles contained, to be at an end, to all intents, effects, constructions, and purposes whatsoever, *save* and except the covenants and agreements in the said articles contained in regard to the winding up and settlement of the affairs and accounts of the said copartnership, upon the determination or dissolution thereof. IN WITNESS, &c.

Recital that parties have carried on business for —— years under articles.

Testatum, whereby the partners, in pursuance of a power in the articles,

dissolve the copartnership;

and declare the articles at an end, except as to the covenant for winding up the affairs of the copartnership.

(*a*) A deed of this kind is not very common, as in most cases it is necessary, on the dissolution of a copartnership, for the partners to make some specific arrangements in regard to dividing the stock, and getting in the debts; and in these cases the arrangements are usually carried into effect by the same deed by which the parties dissolve their copartnership.

DISSOLUTION OF COPARTNERSHIP.

Deed of Dissolution of Partnership, *where one of the Partners assigned his Share in the Copartnership Effects to the other Partner, in consideration of a sum of Money, and a proportion of the Copartnership Debts; with mutual Releases.*

Parties.

Recital that the parties have carried on the business of—— under a deed of copartnership.

That they have agreed to dissolve the copartnership,

and have stated and settled a final account between them.

That B. has agreed that A. should have the stock in trade, &c. except the debts in the schedule;

THIS INDENTURE, made the day of , 182 , Between [A.] of, &c. of the one part, and [B.] of, &c. of the other part; Whereas the said [A.] and [B.] have for some time past carried on the trade or business of a linen draper, in Street aforesaid, in the shares and proportions following, (that is to say); the said [A.] in five-eighth parts, and the said [B.] in three-eighth parts thereof, upon the terms and conditions, and under and subject to the covenants and agreements contained in a certain indenture, bearing date the day of 18 , and made between the said [A.] of the one part, and the said [B.] of the other part, and in a certain memorandum endorsed thereon, signed by both of the said parties, bearing date the day of ; And whereas the said [A.] and [B.] have mutually consented and agreed to determine and dissolve the said copartnership, and no longer to be or continue partners in their said trade or business; And whereas the said parties have on the day of the date hereof stated and made out a full, fair, and final account between them of and concerning all the goods, wares, merchandizes, ready money, stock in trade, debts, credits, and all other effects, matters, and things belonging, or due, or owing to or from them, as such copartners or joint traders as aforesaid, and have respectively subscribed the same, in testimony of their approval thereof; And whereas the said [B.] hath consented and agreed that the said [A.], who intends to carry on the said trade or business by himself alone, should have and take, to and for his own use and benefit, the said parts or shares of him the said [A.] of and in the said goods, wares, merchandizes, ready money, stock in trade, debts, credits, and effects belonging, or due and

owing to the said copartnership as aforesaid, other than and except the several debts or sums mentioned and comprised in the schedule hereunder written, or hereunto annexed; *And* the said [B.] hath agreed to vest the said [A], his executors and administrators, with the several powers and authorities hereinafter given to him and them, and to enter into the several covenants and agreements hereinafter contained on the part and behalf of him the said [B.], his executors and administrators, to be observed and performed; *In* consideration whereof, the said [A.] hath agreed to pay to the said [B.] the sum of pounds, of lawful money of Great Britain and Ireland; *And* to assign and make over to him the said [B.], for his own use and benefit, the parts or shares of him the said [A.] of and in the said several debts or sums mentioned and comprised in the said schedule hereunder written, or hereunto annexed, with full powers for getting in and receiving the same; *And* also to enter into the several covenants and agreements hereinafter contained on the part and behalf of him the said [A.], his executors and administrators, to be observed and performed; *And* it was at the same time agreed that the said parties hereto should make and execute the mutual release hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, THEY, the said [A.] and [B.], with the mutual consent and assent of each other, *Have* determined and dissolved, and by these presents *Do* determine and dissolve their said copartnership and joint trade and business, and the hereinbefore mentioned indenture of copartnership, and the memorandum thereon endorsed, and every clause, covenant, agreement, matter, and thing contained in the same indenture and memorandum, or either of them, and *Do* hereby declare and agree that the same shall respectively from henceforth cease and determine, to all intents and purposes whatsoever. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the sum of pounds(*a*), by the said [A.] to the said [B.] in hand well and truly paid, at or imme-

DISSOLUTION OF COPARTNERSHIP.

and to vest him with the powers after given, and to enter into the covenants after contained on his part to be kept.

and that A has agreed to pay to B. ——*l.*, and to assign to him his share in the debts mentioned in the schedule.

and to enter into the covenants after contained, on his part to be kept; and that the parties had agreed to execute mutual releases.

First witnessing part. Dissolution of the copartnership.

Second witnessing part. Assignment from B. to A. of his share in the copartnership effects,

(*a*) See note as to the stamp, p. 220, and the case there referred to.

DISSOLUTION OF COPARTNERSHIP.

other than and except the debts in the schedule.

diately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), *And* also in consideration of the assignment and release hereinafter given by the said [A.], and the several covenants and agreements hereinafter contained on the part and behalf of the said [A.], his executors and administrators, to be observed and performed; HE the said [B.] *Hath* granted, bargained, sold, assigned, released and confirmed, *And* by these presents *Doth* grant, bargain, sell, assign, release, and confirm unto the said [A.], his executors, administrators and assigns, ALL THOSE the said three-eighth parts or shares of him the said [B.] of and in all and singular the goods, wares, merchandizes, ready money, stock in trade, debts, credits, effects, matters and things, belonging, or due, and owing to them the said [A.] and [B.] as such copartners and joint traders as aforesaid, or in respect of the said copartnership and joint trade, (other than and except the said several debts or sums of money particularly mentioned and set forth in the said schedule hereunder written or hereunto annexed); *And* all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [B.] in, to, out of, or upon the same premises (other than and except as aforesaid), TO HAVE, HOLD, receive, and take the said parts or shares hereby assigned, or intended so to be, of, and in the goods, wares, merchandizes, ready money, stock in trade, debts, credits, effects and premises, hereinbefore mentioned (except as aforesaid), unto the said [A.], his executors, administrators, and assigns, to and for his and their own use and benefit, and as and for his and their own goods and chattels: AND for the better and more effectually enabling the said [A.], his executors and administrators, to recover, receive, and get in the said goods, wares, merchandizes, stock in trade, debts, credits, effects, and premises, and every or any of them (other than and except as aforesaid), HE the said [B.] *Hath* made, ordained, constituted, and appointed, *And* by these presents *Doth* make, ordain, constitute, and appoint the said [A.], his executors, administrators and assigns, his true and lawful attorney or attornies, in the joint names of them the said [A.] and [B.], or in the name of the said [B.] alone or otherwise, but for the sole use and benefit, and at the sole costs and charges of the said

Power of attorney from B. to A. to get in the copartnership effects, except the debts in the schedule.

DISSOLUTION OF COPARTNERSHIP.

[A.], his executors, administrators, or assigns, to demand, call in, and receive, of and from all and every person and persons liable or intrusted to pay or deliver the same respectively, the said debts and effects, the part or shares of the said [B.], which are hereby assigned, or intended so to be, and on nonpayment, or nondelivery thereof, to use, take, and prosecute every, or any lawful or equitable method, course, or expedient for recovering, receiving, and getting in the same debts and effects, or any of them, or any part thereof, and generally to do, or cause to be done, every other act, matter, or thing necessary or convenient in or about the same premises, and that in as full, ample, and beneficial a manner, to all intents and purposes, as they the said [A.] and [B.], or the said [B.] alone, could or might have done, in case the said copartnership had not been dissolved, and these presents had not been made and executed, or as if the said [B.] were personally present and did the same; AND for the considerations aforesaid, he the said [B.] doth hereby for himself, his heirs, executors and administrators, COVENANT, promise, and agree with and to the said [A.], his executors, administrators and assigns, in manner following, (that is to say); that he the said [B.] hath not at any time heretofore contracted any debt or debts, or become bound, bail, or security, or otherwise engaged, to pay any debt or debts, or sum or sums of money, which can or may affect or charge the said goods, wares, merchandizes, stock in trade, debts, effects and premises, or any of them, or any part thereof, or for the recovery whereof the said [A.], his executors or administrators, is, are, or may be subject or liable to be sued or prosecuted in any court of law or equity whatsoever, save and except such debts as are entered in the books of account kept by the said [A.] and] B.], or fully and clearly made known to the said [A.], before the sealing and delivery of these presents; *And* that he the said [B.] hath not at any time assigned, released, discharged, or received any of the said goods, wares, merchandizes, stock in trade, debts, effects, and premises, or done any other act, whereby the same or any part thereof may be charged or incumbered (save and except as aforesaid); *And* that he the said [B.], his executors or administrators, shall and will justify and allow, ratify and confirm all and whatsoever the said [A.],

Covenant from B. that he has not contracted any debts for which he can be liable, except the debts entered in the copartnership books, &c.

and that he has done no act to incumber;

that he will confirm what A. shall do in the premises;

DISSOLUTION OF COPARTNERSHIP.

his executors, administrators, or assigns, shall lawfully do, or cause to be done in or about the premises; *And* shall and

and will do and execute such further acts for enabling A. to recover and receive the debts and effects as A. shall require;

will, from time to time, and at all times hereafter, at the request, and costs and charges of the said [A.], his executors administrators, or assigns, make, do, and execute all and every such further and other act and acts, and thing and things, for the better empowering and enabling the said [A.], his executors, administrators and assigns, to recover, receive, and get in the said goods, wares, merchandizes, stock in trade, debts, effects and premises (other than and except as aforesaid), for his and their own proper use and benefit, as by the said [A.], his executors, administrators, or assigns, or his or their counsel in the law, shall be lawfully and reasonably advised and required; *And* moreover

and will not revoke the powers before given, or release or compound debts, or release or become nonsuit in actions.

that he the said [B.], his executors or administrators, shall not, nor will revoke or make void any of the powers or authorities hereby given to the said [A.], his executors, administrators and assigns, nor receive, release, or discharge any of the said goods, wares, merchandizes, stock in trade, debts, effects and premises, nor release, compound, disavow, or become nonsuit in any action or suit which may be brought, commenced, or prosecuted for or in respect of the same, or any part thereof, nor do any act or thing whereby, or by means whereof the recovery of the same premises, or any part thereof, may be impeded or delayed, nor interfere or intermeddle in the same premises, further or otherwise than the said [A.], his executors, administrators, or assigns, shall direct or require. AND THIS INDENTURE

Third witnessing part.

FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the assignment and release, and covenants and agreements, hereinbefore respectively contained and entered into, on the part of the said [B.] as aforesaid; *He* the said [A.] *Hath*

Assignment from A. to B. of his share in the debts in the schedule.

granted, bargained, sold, assigned, released and confirmed, *And* by these presents doth grant, bargain, sell, assign, release and confirm unto the said [B.], his executors, administrators and assigns, ALL THOSE the said five-eighth parts or shares of him the said [A.] of, and in the said several debts or sums of money mentioned and comprised in the said schedule hereunder written, or hereunto annexed; *And* all the right, title, interest, property, claim and demand whatsoever, both at law or in equity of him the

DISSOLUTION OF COPARTNERSHIP.

said [A.], in, to, out of, or upon the same debts or sums, and every, or any of them, To HAVE, HOLD, receive, and take the said parts or shares hereby assigned, or intended so to be, of and in the debts or sums of money lastly hereinbefore mentioned, unto the said [B.], his executors, administrators and assigns, for his and their own use and benefit, and as, and for his and their own goods and chattels.

Power of attorney from [A.] to [B.], to enable him to get in the last mentioned debts or sums, as ante, *p.* 228.

Similar covenants from [A.] to [B.], in respect to the debts or sums lastly mentioned, as were entered into by [B.] with [A.], in respect to the goods, debts, and effects, firstly assigned. See ante, *pp.* 229, 230.

Covenant from A. to indemnify B. from the debts owing by the copartnership.

AND in pursuance and further performance of the said agreement, and for the considerations aforesaid, he the said [A.] doth hereby, for himself, his heirs, executors, and administrators, further COVENANT, promise, and agree with and to the said [B.], his executors, administrators, and assigns, that he the said [A.], his heirs, executors, or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, all and every the debts and sums of money which are due and owing from or by them the said [A.] and [B.], in respect of their said late copartnership and joint trade, and shall and will, from time to time, and at all times hereafter, save, defend, keep harmless and indemnified, the said [B.], his executors and administrators, and his and their lands and tenements, goods and chattels, of, from, and against the same debts or sums of money, and every of them, and all actions, suits, losses, costs, charges, and expenses, which he the said [B.], his executors, or administrators, or any of them, shall or may be involved in, incur, sustain, expend, or be put unto, for or by reason, or on account thereof, or for or by reason or on account of any matter or thing in anywise relating thereto; *And* also of, from, and against all losses, damages, costs, charges, and expenses, which he the said [B.], his executors or administrators, or any of them, shall or may incur, sustain, expend, or be put unto, for or by reason, or on account of any action or suit, or actions or suits, which shall or may be brought or prosecuted in the names or name of the said [A.] and [B.], or of the said [B.], under or by virtue of the power or autho-

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ity hereinbefore given by the said [B.], or of any power or authority hereafter to be given by him as aforesaid; or for or by reason, or on account of any matter or thing in anywise relating thereto: AND in pursuance and further performance of the said agreement, and for the considerations aforesaid, he the said [B.] doth hereby, for himself, his heirs, executors, and administrators, further COVENANT, promise, and agree with and to the said [A.], his executors and administrators, that he the said [B.], his heirs, executors, or administrators, or some or one of them, shall and will, from time to time, and at all times hereafter, save, defend, keep harmless and indemnified, the said [A.], his executors and administrators, and his and their lands and tenements, goods and chattels, of, from, and against all losses, damages, costs, charges, and expenses, which he or they, or any of them, shall or may incur, sustain, expend, or be put unto, for or by reason, or on account of any action or suit, or actions or suits, which shall or may be brought or prosecuted in the names or name of the said [A.] and [B.], or of the said [A.], under or by virtue of the power or authority hereinbefore given by the said [A.], or of any power or authority hereafter to be given by him as aforesaid, or for or by reason, or on account of any matter or thing in anywise relating thereto.

Similar covenant from B. to indemnify A. against actions to be brought for the recovery of the debts in the schedule.

Fourth witnessing part.

AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, *Each* of them the said [A.] and [B.], *Hath* acquitted, released, and for ever discharged, and by these presents *Doth* acquit, release, and for ever discharge the other of them, his heirs, executors, and administrators, and his and their estates and effects whatsoever and wheresoever, of and from all actions, suits, claims, and demands whatsoever, which he hath, or otherwise might or could have, against or upon the other of them, his heirs, executors, or administrators, and his and their estates and effects whatsoever and wheresoever, for or by reason, or on account of the said copartnership hereby dissolved as aforesaid, or for or by reason, or on account of any act, deed, matter, or thing whatsoever in anywise relating thereto, other than and except such actions, suits, claims, and demands, as shall or may arise upon or by virtue of these presents. IN WITNESS, &c.

Mutual releases from all claims except such as may arise on these presents.

DISSOLUTION OF COPARTNERSHIP.

DISSOLUTION *of a* PARTNERSHIP *between* THREE PERSONS, *where one Partner continued the Business on his own Account, taking the Stock in Trade at a Valuation, and paying to the other Partners, for the Good Will of the Business, an Annuity for a certain number of Years, if they should so long live; and where the Partner who continued the Business was intrusted to get in the Outstanding Debts, and apply the same in Discharge of the Debts due from the Copartnership, and divide the Surplus between himself and the other Partners. Special Covenants in regard to getting in the Debts due to the Copartnership, and restraining the Partners who retired from the Business from interfering therein, or carrying on the like Trade within a given Time and Distance. Mutual Releases.*

Parties.

THIS INDENTURE, made, &c. BETWEEN [A.] of, &c. of the first part; [B.] of, &c. of the second part; and [C.] of, &c. of the third part; WHEREAS by articles of agreement bearing date the day of , and made, or expressed to be made, between the said [A.] of the first part; the said [B.] of the second part; and the said [C.] of the third part; the said [A.], [B.], and [C.], mutually agreed to become partners together in the trades or businesses of a bookseller and stationer, for the term of twenty-one years, to be computed from the day of the date thereof, if the said [A.], [B.], and [C.] should so long live, upon, under, and subject to the several stipulations, conditions, and agreements therein particularly mentioned; AND WHEREAS the said [A.], [B.], and [C.], lately agreed that the copartnership subsisting between, under the said recited articles of agreement, should be dis-

Recital of articles of copartnership:

of the agreement to dissolve the copartnership,

DISSOLUTION OF COPARTNERSHIP.

and the arrangement made thereon.

solved, as from the day of the date of these presents; *And* that a valuation and appraisement should be made of the stock in trade belonging to the said copartnership, and of the furniture and fixtures in or about the messuage or tenement and premises, in which the business of the said copartnership has been carried on; *And* that an account should be made and stated of all the monies, debts, credits, and effects of or belonging, or due and owing to the said copartnership, (except the said stock in trade, furniture and fixtures so agreed to be valued as aforesaid), and of all the debts and sums of money due and owing from or by the said copartnership to any person or persons, by reason, or on account of the business thereof; *And* that the said [B.] should from henceforth be the sole tenant of the messuage or tenement, and premises hereinbefore referred to, and should accept and take the said stock in trade, furniture, and fixtures, so agreed to be valued as aforesaid, at or for the price or sum at which the same should be so valued; *And* should, by the joint and several bond of himself and his father [T. B.] of, &c. Gent. secure to each of them the said [B.] and [C.], a sum of money equal in amount to one third of such value, by two equal instalments, one of them to be paid at the expiration of two years from the date of these presents, and the other of them at the expiration of three years from the date hereof, with interest for the same respectively in the mean time, after the rate of five pounds for one hundred pounds, by the year, such interest to be paid half yearly; *And* that the said [B.] should from henceforth have and be entitled to the goodwill of the said copartnership business, and the profits hereafter to arise from the same; *And* that in consideration thereof, he should by the joint and several bond of himself and his said father, secure to each of them the said [A.] and [C.] an annuity of pounds for the term of seven years, to be computed from the day of the date of these presents, if he the said [B.] should so long live; *And* that the said [A.], [B.], and [C.], should respectively enter into the covenants hereinafter on their parts contained, and release each other in such manner as is hereinafter mentioned; AND WHEREAS in pursuance and part performance of the said agreement, the stock in trade,

That in pursuance of said agreement, the

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furniture, and effects, so agreed to be valued as aforesaid, have been valued by [X. Y.] of , on the part of the said [A.], by [Y. Z.] of , on the part of the said [B.], and by [E. F.] of , on the part of the said [C.], at the sum of pounds, with which valuation the said [A.], [B.], and [C.], are respectively satisfied, as they do hereby respectively testify and declare; AND WHEREAS, in pursuance and further performance of the said agreement, an account hath been duly made out and stated of all the monies, debts, and effects, belonging or owing to the said copartnership, up to the day of the date hereof, and of all the debts and sums of money now owing from, or by the said copartnership; *And* it appears from such accounts that, after every proper allowance for bad or doubtful debts, there is a balance in favor of the said copartnership of pounds, as they the said [A.], [B.], and [C.], do hereby also respectively testify and declare: AND WHEREAS, in pursuance and further performance of the said agreement, the said [A.] and [C.] have this day delivered up to the said [B.] full and exclusive possession of the messuage or tenement and premises hereinbefore mentioned or referred to, and of the stock in trade, furniture and fixtures, which have been so valued at the sum of pounds, as aforesaid; *And* the said [B.] hath this day delivered to each of them the said [A.] and [C.] a joint and several bond from himself and his father, the said [T. B.], for securing to him respectively the payment, at the times and in manner aforesaid, of the principal money, interest, and annuity so respectively agreed to be secured to him, as hereinbefore is mentioned and recited. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, THEY the said [A.], [B.], and [C.], with the mutual assent and consent of each other, *Do*, by these presents, determine and dissolve the said copartnership in which they have been so engaged, as hereinbefore is mentioned, as from the day of the date of these presents, and declare the same to be at an end, to all intents and purposes whatsoever; *And* that the covenants and agreements expressed and contained in

stock had been valued;

and an account made out of the debts due to and by the copartnership.

That in further pursuance of said agreement, the stock had been given up to B.

and that B. had by the bond of himself and his father secured one-third of the value to A., and another one-third to C. and had also by a like bond secured to A. and C. an annuity of ——*l.* for ——— years, in respect of the good will.

First witnessing part. Dissolution of the copartnership.

DISSOLUTION OF COPARTNERSHIP.

the said hereinbefore recited articles of copartnership shall also cease and determine, as from the day of the date hereof.

Second witnessing part. A. and C. covenant with B.

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, *Each* of them, the said [A.] and [C.], so far as relates to the acts and deeds of himself, and of his executors and administrators, but not further or otherwise, *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [B.], his executors, administrators, and assigns, in manner following, (that is to say); that the stock in trade, furniture, and fixtures, which have been so valued as aforesaid, and which have been this day delivered up to the said [B.], as hereinbefore is mentioned, shall from henceforth be held, possessed, and enjoyed by the said [B.], his executors, administrators, and assigns, to and for his and their own absolute use and benefit, without any let, suit, denial, interruption, claim or demand whatsoever, of, from, or by the said [A.] and [C.], or either of them, or their or either of their executors or administrators, or any person or persons whomsoever, claiming, or to claim, by, from, through, under, or in trust for them, or any of them; *And* that all the monies, debts, and other effects which are now belonging, or due and owing, to the said copartnership, so hereby dissolved as aforesaid, shall be received, collected, and got in by the said [B.], his executors, administrators, or assigns, at the equal expense and for the equal benefit of them the said [A.], [B.], and [C.], their respective executors, administrators, and assigns; *And* that for that purpose the said [B.], his executors, administrators, and assigns, shall and may commence, take, and adopt such actions, suits, measures and proceedings, as to him or them shall seem expedient and proper, except as hereinafter is provided: *And* that for the better enabling him and them to receive, collect, get in, and recover the same monies, debts, and effects, they the said [A.] and [C.], their respective executors and administrators, shall and will, upon the request of the said [B.], his executors, administrators, or assigns, give and execute to him or them such further powers and

that the stock in trade, &c. shall be held by B. for his own use, without any claim by A. or C.

that the debts and other effects shall be got in by B. for the equal benefit of all parties,

DISSOLUTION OF COPARTNERSHIP.

authorities, letters of attorney, (*a*) and other things, as he or they, or his or their counsel learned in the law shall reasonably require in that behalf; *And* that they the said [A.] and [C.], their respective executors and administrators, shall not, nor will at any time or times hereafter, by themselves respectively, or by any agent or agents, receive or take into their or any of their possession, any of the same monies, debts, and effects, or any part thereof respectively, nor release or discharge the same, or any of them, nor release, discontinue, or become nonsuit, in any suit or action which shall be commenced or brought for the recovery of the same monies, debts, and effects, or any of them, or any part thereof respectively, without the consent in writing of the said [B.], his executors, administrators, or assigns, for that purpose first had and obtained, nor do, execute, commit, or suffer, or be party or privy to any act, deed, matter or thing whatsoever, whereby, or by means whereof, the said [B.], his executors, administrators, or assigns, shall be hindered or obstructed from receiving, collecting, getting in, or recovering the said monies, debts, and effects, or any of them, or any part thereof; *And* that it shall be lawful for the said [B.], his executors, administrators, or assigns, with and out of the monies which shall be so received or recovered, and which shall remain after discharging the costs and expenses of or attending the receipt and recovery of the same, and also by the sale and conversion into money of the effects which shall be so received or recovered as aforesaid, forthwith to pay and discharge the debts or sums of money which are now due and owing from or by the said copartnership, so hereby dissolved as aforesaid, in such order and manner as the convenience of parties, and other circumstances, may, in

that A. and C. will not obstruct him in the receipt thereof;

that out of the monies so received, B. may pay the copartnership debts as circumstances require;

(*a*) By an indenture of even date with the above deed, A. and C. gave to B. a power of attorney to receive and get in the copartnership debts. The reason for having a separate deed was, that in case it should be necessary to produce the power of attorney on any occasion, the arrangement of the parties, on the dissolution of the copartnership, might not be disclosed. For a form of such a power of attorney, see *ante*, p. 228, and Index, LETTER of ATTORNEY.

DISSOLUTION OF COPARTNERSHIP.

his or their judgment, require; *And* that in case the said monies shall be insufficient to pay and discharge the whole of the same debts or sums, *Then*, and in such case, each of them the said [A.] and [C], his executors or administrators, shall and will, on demand, pay to the said [B.], his executors or administrators, or otherwise make up, one equal third part or share of the deficiency: *And further*, that (*b*) they, the said [A.] and [C.], shall not, nor will at any time during the term of years, to be computed from the day of the date of these presents, either alone or together, or with or for any other person or persons, carry on or be engaged in the trades or businesses of a bookseller and stationer, or either of them, or in any matter or thing whatsoever in anywise relating thereto, within miles of aforesaid; *And* that in case either of them shall act contrary to or infringe this agreement, the party so acting, his executors or administrators, shall immediately thereupon pay to the said [B.], his executors or administrators, the sum of pounds, as or by way of stated or liquidated damages. PROVIDED ALWAYS, that if the said [B.], his executors, administrators, or assigns, shall neglect or refuse to collect and get in the said monies, debts, and effects, as hereinbefore mentioned, or any of them, for the space of three calendar months, after being thereunto requested by the said [A.] and [C.], or either of them, it shall be lawful for the said [A.] and [C.], or either of them, to take and adopt such measures and proceedings for collecting and getting in the same, as they or he may think expedient.

that in case of deficiency, A. and C. will each pay one third of it;

And that for —— years, A. and C. will not carry on the like trade, within ——— miles of ——.

Proviso, that if B. neglects to get in the debts, A. and C. may get them in.

(*b*) Another form:

"THAT while the said [B] shall, within the said town of , carry on the trades or businesses of and , or either of them, either alone or with or for any other person or persons, he the said [A.] shall not nor will, within the said town of , or within twenty miles therefrom, either alone or jointly with any other person or persons, or in any manner, either directly or indirectly, be concerned or engaged in the like trades or businesses, or either of them."

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AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, HE, the said [B.], *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [A.] and [C.], and each of them, and their and each of their executors and administrators, (*c*) that he, the said [B.], his executors, administrators, and assigns, shall and will use his and their best endeavours to collect, get in, recover, and receive the said monies, debts, and effects, which are now belonging, or due and owing, to the said copartnership, so hereby dissolved as aforesaid, and shall and will sell and dispose of, to the greatest advantage, such of the effects which shall be so recovered or received as shall not consist of money, and shall and will, by and out of the monies produced thereby, and the monies which shall be so recovered or received as aforesaid, pay and discharge the costs and expenses which shall be incurred or sustained, in or about the recovery and receipt of the same, and all the debts or sums of money which are now due and owing from or by the said copartnership, and shall and will pay one equal third part or share of the surplus or residue of the said monies, unto each of them the said [A.] and [C.], his executors and administrators, for his and their own absolute use and benefit; *And* that in case the monies which shall be so produced, recovered and received as aforesaid, shall be insufficient to pay and discharge the whole of the debts and sums of money now due and owing from or by the said copartnership, he the said B., his executors or administrators, shall and will pay, or otherwise make up, one-third part or share of the deficiency; *And* that he, the said [B.], his executors, administrators, or assigns, shall not nor will commence or prosecute any action or suit for the recovery of any of the said debts or sums, to be so recovered and received as aforesaid, without giving to the said [A.] and [C.], their respective executors or administrators, one calendar month's

Third witnessing part.

Covenant from B. to endeavour to get in the debts due to the copartnership;

and out of the monies recovered, to pay the debts due from the copartnership,

and to pay one third of the surplus to A. and another to C.

and that in case of deficiency he will pay one-third of it;

(*c*) In this transaction, B. and his father joined in a bond of even date, to secure the due observance and performance of these covenants. Bond.

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previous notice in writing of his or their intention so to do, and procuring the consent thereto of at least one of them the said [A.] and [C.], his executors or administrators.

Fourth witnessing part. Mutual releases.

AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, *Each* and every of them the said, [A.] [B.], and [C.], *Hath* acquitted, released, and for ever discharged, *And* by these presents *Doth* acquit, release, and for ever discharge the others and other of them, their and his heirs, executors, and administrators, and their and every of their estates and effects whatsoever and wheresoever, of and from all actions, suits, claims, and demands whatsoever, which he hath, or otherwise might or could have, against or upon the others and other of them, their and his heirs, executors, or administrators, and their and every of their estates and effects whatsoever and wheresoever, for or by reason, or on account of the said copartnership hereby dissolved as aforesaid, or for or by reason, or on account of any act, deed, matter, or thing whatsoever in anywise relating thereto, other than and except such actions, suits, claims, and demands, as shall or may arise upon or by virtue of these presents. IN WITNESS, &c.

PURCHASE DEEDS.

ON THE LEASE AND RELEASE, AND THE REQUISITES OF DEEDS IN GENERAL.

LEASE AND RELEASE—*The Advantages of this Assurance—What may be conveyed thereby*—REQUISITES *of a Deed—Consideration—Parts of Deeds—What common to all—Date—As to Dating a Deed on Sunday—Recitals—Their Operation, and late Cases thereupon—Payment of Consideration, whether conclusive at Law—Parcels, and Directions for their Description—"All the Deeds," when it should be inserted—Habendum, when it will be void—Receipt for Consideration—Delivery—Escrows, what Words necessary to make.*

Plan of this title.

Under the heads of APPOINTMENT, ASSIGNMENT, BARGAIN AND SALE, COVENANT TO STAND SEISED, FEOFFMENT, GRANT, RELEASE, &c. in the Index, references will be found to distinct dissertations on the several species of purchase deeds. It happens therefore, that the matter for a complete introductory chapter on Purchase Deeds, has either been already anticipated in former parts of this work, or will be considered, with a greater regard to order, in the subsequent parts. Many other notes relating to purchase deeds will, however, be interspersed throughout this title, and will be found in the places to which they seem most properly to belong.

Lease and release.

In looking over the precedents here given, it will immediately strike the reader that they chiefly consist of the great assurance of modern times—the release grounded on a lease. A few precedents will be found in which the other assurances are adopted; but it was thought useless to multiply forms which are now almost entirely superseded; and the more so, as under the particular titles of *Feoffment, Grant, &c.* precedents will be found of these deeds, which will sufficiently elucidate their peculiar properties. But in the comparatively limited space allotted to this title, it was thought advisable to devote it to those forms

for which there is a constant demand in actual practice, and not to those which might have been given, if the title had been treated of *theoretically*.

The advantages of this assurance.

In conveying real property, whether corporeal or incorporeal, unless some special purpose is to be answered which requires the peculiar properties of the other assurances, leases and releases are universally adopted. This mode of conveyance is to be preferred to a feoffment, as it requires no additional ceremony, such as livery of seisin, to complete it; and to a bargain and sale or covenant to stand seised, as it is more capable of carrying into effect the usual intentions of the parties, as uses can be declared of the seisin of the releasee, but not of that of the bargainee or covenantee: and in the conveyance of incorporeal hereditaments, or of remainders or reversions, it is generally more convenient, as the doubt as to the necessity of the insertion of the word "*grant*" is thereby avoided.

What may be conveyed by lease and release.

Whatever may be conveyed to uses, may be conveyed by lease and release. Therefore any incorporeal hereditament in *esse*, and which savours of the realty, may be conveyed by it. Cro. Eliz. 166. But it would be an improper conveyance for a personal annuity, or any other mere personalty, as in this case an assignment should be employed.

Remainders and reversions.

Remainders and reversions are now very generally conveyed by this assurance, as it will obviate the necessity of proving that the particular estate was in existence at the time of the conveyance, which would be necessary if a grant were employed; although some practitioners endeavour to avoid this difficulty by endorsing on the grant the fact of the existence of the particular tenant. But a vested estate is necessary for the perfection of a lease and release, as the bargainee in the lease for a year must be *seised* of his estate. A contingent remainder, therefore, cannot be the subject of a lease and release, as there can be no seisin of it. Fearne Cont. Rem. 366, 7th edit. Neither can an executory interest, whether limited by a conveyance to uses, or by devise, be conveyed by lease and release, or indeed by any legal conveyance. 4 Co. 66 b. 10 Co. 50. They can only be released at common law, Lit. s. 447, Co. Litt. 265 b. 266 b., although they may be assigned in equity, *Wright* v. *Wright*, 1 Ves. 411.

Executory interest, or devise.

For further information on the subject of this assurance, the reader is referred to 3 Byth. 157; 2 Sand. Us. 60; 2 Prest. Conv. 207; and 4 Cru. Dig. 123; works which have entirely superseded the necessity of discussing the matter at greater length in this place.

I shall now advert, as shortly as possible, to the requisites of a deed; touching as lightly as possible on the information on this subject, which is familiar to every one acquainted with conveyancing, or which may easily be found in the popular treatises on the subject. And in doing so, therefore, it has not been thought necessary to discuss at any

length those requisites of a deed which have been unaffected by recent decisions.

Requisites of a deed.

The requisites of a deed are usually said to be—I. Sufficient parties and a proper subject matter. II. A good and sufficient consideration. III. Writing on paper or parchment duly stamped. IV. Words sufficient to specify the agreement legally and orderly set forth. V. Reading, if desired. VI. Sealing and signing. VII. Delivery. VIII. Attestation by witnesses.

Consideration not necessary, except to a bargain and sale.

It may be observed, with respect to the second requisite, that a good consideration is not essential to the actual validity of any other deed than a bargain and sale, although a court of equity will not lend its assistance to carry a deed into effect unless it be supported by some consideration. *Osgood* v. *Strode*, 2 P. W. 245, 6th edit., and the cases there cited in the notes.

Usual parts of a deed.

From the fourth requisite have arisen those well known parts of a deed, which, although not essential to it, are most proper for effecting the purpose of the parties, and which are always employed in framing a conveyance. These are, I. THE PREMISES, containing the date, parties, recitals, consideration, and receipt thereof, the words of conveyance, and the description of the thing conveyed. II. THE HABENDUM; which is now joined with, III. THE TENENDUM. IV. COVENANTS; and, V. THE CONCLUSION, in which is contained the mention of the execution and delivery. Justice Blackstone and others have also mentioned the reddendum, conditions, and warranty, as "parts it is prudent not to depart from, without good reason or urgent necessity." 2 Bl. Com. 298, and cited by 4 Cru. Dig. 26, 3d edit. But it may be observed, that these last parts are by no means proper to all deeds, which, from this passage, the student might reasonably suppose; but are only applicable to particular deeds, and to peculiar circumstances. Thus, the reddendum is scarcely ever employed but in leases; conditions, in leases, mortgages, and settlements; and warranty, and that very rarely, in feoffments. The parts usually employed in all deeds are those mentioned above; and even of those, recitals and covenants are often, from the peculiar circumstances of the case, omitted. These parts will now be adverted to.

What parts are common to all deeds.

Whether a deed can be dated on Sunday.

Date.—It has been laid down very generally, that a deed may safely be dated upon a Sunday, as *dies dominicus non est juridicus*. Wingate's Max. 7. Noy's Max. 2. Co. Litt. 135 a. 2 Sand. 291. And it has been thought that the statute for the observance of the Lord's-day, does not apply to the private transactions of individuals. 2 Prest. Conv. 363. And this opinion has been confirmed by the late case of *Drury* v. *Defontaine*, 1 Taunt. 131. *Bloxtom* v. *Williams*, 3 B. and C. 232. And see *Sandeman* v. *Breach*, 7 B. & C. 96. Perhaps, however, some doubt has been thrown on this principle by the case of *Fennell* v. *Ridler*, 5 B. and C.

406; where it was said, that the statute must be looked upon as regulating the private, as well as the public conduct of individuals; and this view was adopted and enlarged upon in *Smith* v. *Sparrow*, 4 Bing. 84. It must seldom happen, however, that deeds are executed on that day; but it may be advisable to date a lease for a year on Saturday, where the release is to be executed on Monday.

Recitals essential to a modern deed.

Recitals. Although recitals are not a necessary part of the deed, as far as actual validity is concerned, 2 Cha. Ca. 101, yet in most transactions of modern times, they are necessary to the correctness of the instrument; and, indeed, according to the modern system of conveyancing, are made essential to its very existence. Thus the parcels are now not unfrequently described in them; the payment of the consideration is often mentioned in recitals; the facts relating to the title, as the births, deaths, and marriages, are stated, and the precise dates given; and recitals of this nature, in default of other evidence, are relied upon as the medium of proof: and it is the constant practice of conveyancers, on the examination of titles, to receive as evidence, recitals of thirty or forty years back, if there are corroborative circumstances, strengthening the presumption that the facts were according to such recitals. And see *Anon.* Prec. Cha. *Dundas* v. *Dutens*, 1 Ves. jun. 196. *Cordwell* v. *Mackrill*, Amb. 515. And if the deeds themselves are destroyed, recitals of them in other deeds will be admitted in evidence. *Anon.* 12 Vin. Ab. 223, pl. 15. Comb. 341. 6 Mod. 44. Cowp. 595. *Skipwith* v. *Shirley*, 11 Ves. 64. And as to a particular fact, they will operate by estoppel, although they will not have this operation as to a general statement. *Shelly* v. *Wright*, Willes, 9. *Rees* v. *Lloyd*, Wightw. 123. *Holmes* v. *Ailsbie*, 1 Madd. 551.

Their operation.

These principles have been, in some degree, borne out by the late case of *Fort* v. *Clarke*, 1 Russ. 601; where a vendor placed his title on the ground that he was not bound to establish by extrinsic testimony the truth of recitals in deeds of 1793. But the Master of the Rolls (Lord Gifford) was of opinion that these recitals, whatever effect they might have against the parties to the deeds, could not, as against third persons, be any evidence of the facts recited in them. If evidence had been given that possession had followed and accompanied the matters therein recited, that enjoyment would have been a strong circumstance to prove that the facts actually were as they were stated. But there was not the slightest proof of any possession from 1747 to 1793, in those through whom the title was traced.

This decision, therefore, the result of which is given, although the details of the facts are not stated, is in accordance with the principles above stated. And see also, *Prosser* v. *Watts*, 6 Madd. 59.

Recitals will controul the operative

In the construction of deeds also, recitals will always be taken into consideration; and the operative part will be controuled by a recital, if

it seem consistent with the intention of the parties. Thus in *Lampon v. Corke*, 5 B. & A. 606, 1 Dow. & Ry. 211, S. C., a deed recited that the defendant, being desirous of obtaining possession of certain premises, applied to and prevailed on the plaintiff, to give him possession of the same; which the plaintiff accordingly, on the 11th of April, did, *he the said defendant having then agreed to pay unto the plaintiff* the sum of 40*l. for such possession;* and that the defendant had requested the plaintiff to execute an assignment thereof; and it was thereby witnessed, that "*in pursuance of such agreement, and in consideration of the said sum of* 40*l. being now so paid to the plaintiff as hereinbefore is mentioned,*" and also of a nominal consideration to the plaintiff (the receipt of which sums were acknowledged in the usual manner), the plaintiff conveyed the premises to the defendant, and a receipt for the sum of 40*l.* was indorsed on the deed. It was clearly proved however that the sum of 40*l. was never paid;* and the plaintiff, who had brought an action for the 40*l.*, obtained a verdict. On a motion by the defendant to enter a nonsuit, part of a deed. *Lampon* v. *Corke.*

Abbott, C. J. said, it appears to me, that in this case the release does not operate to prevent the plaintiff from recovering. The deed is, indeed, inaccurately worded; but the court ought to give such an effect to it, as may best consist with what appears to have been the manifest intention of the parties, and what may best conduce with the real justice of the case. In the recital, it speaks, in the first place, of an agreement to pay, and not of the actual payment of the sum of 40*l.* And then the consideration for the release is stated in these words: "In consideration of the said sum of 40*l.* being now so paid to the said Thomas Lampon the younger, as hereinbefore is mentioned." These latter words shew that the parties meant to refer to the former part of the deed, where it speaks of an agreement to pay this sum; and we ought to read the whole sentence thus: "In consideration of the sum of 40*l.*, now being so agreed to be paid as aforesaid." If that were not so, this absurdity would follow; that the deed would recite an agreement to release, in consideration of the payment of 40*l.*; and then would proceed to release the defendant from the payment of that sum itself. We have been pressed with the difficulty arising out of the words immediately following: "The receipt of which said several sums of money the said plaintiff admits, &c." But these may and do refer most properly to the payment of 10*s.* a-piece, to those persons mentioned immediately before. And by so construing the deed the whole seems intelligible, and consistent with the justice of the case, and the obvious intention of the parties; I think, therefore, that the operation of the deed was not to release this sum, inasmuch as the recital, though in general terms, must be controlled by the previous recital. The verdict is, therefore, right. Abbott, C. J.

Bayley, J.

Bayley J. The true question is, whether there is any thing in this deed which clearly shews that this 40*l.* has been paid to the plaintiff; and that not by a security, but in money. It must necessarily be admitted, that this recital would have been an answer to the action. Then are the words so clear as to leave no doubt? It first recites, that the 40*l.* had been agreed to be paid. The recital does not go on to say, in addition to this, that the 40*l.* has been paid; but when we come to the operative part, we find it stated that, "in consideration of the sum of 40*l.* being so paid as hereinbefore is mentioned;" &c. Now the words "so paid," and "as hereinbefore is mentioned," obviously do not refer to a new payment, but to some former payment mentioned in the deed. Then, if we look back, we find no actual payment there stated; but only an agreement to pay. The words of the deed, therefore, are ambiguous; and let us in to enquire, whether there was an actual payment or not. And, on the facts stated, there is no doubt as to that point. The Court is not, therefore, prevented from deciding according to what appears plainly the justice of the case; for the debt, not being paid, remains still due to the plaintiff.

Holroyd, J.

Holroyd, J. The plaintiff is entitled to our judgment, unless he is estopped, either by deed of release, or by the receipt indorsed on it. As to the latter, it is sufficient to observe, that not being under seal, it cannot amount to an estoppel; but can only be evidence for the jury, capable of being rebutted by the other circumstances of the case. And if so, when it is admitted that no such payment has actually been made, this receipt becomes of no importance. As to the deed, it seems to me to depend upon the construction to be given to the words already referred to; "In consideration of the sum of 40*l.* being now so paid, as hereinbefore is mentioned." If the deed had absolutely stated a payment, unaccompanied by such words of reference, the case would be very different. But here there are words of reference; and we must, therefore, look to the former part of the deed; and there we find no statement of actual payment, but only of an agreement to pay. It seems to me, therefore, that this does not amount to an estoppel, so as to shut out the plaintiff from proof of the truth of the transaction. Estoppels are odious in the law; and, being so, they ought not to be allowed, unless they are very plainly and clearly made out. That is not the case in this deed; and, therefore, I think, it is no estoppel; and then the verdict is right. *Best*, J. concurred. And see also *Beaumont* v. *Bramley*, Turn. 52.

Recitals will be controuled by the body of the deed, if it will effectuate the intention of the parties.

So also, the recital will be controuled by the body of the deed; if, taking the whole of the instrument into consideration, such appears to have been its meaning. *Dearden* v. *Lord Byron*, 8 Pri. 417.

But, when the rights of creditors are concerned, it seems that a recital in a marriage settlement of 1793, will not be admitted as evi-

dence. Thus in *Battersbee* v. *Farringdon*, 1 Swanst. 106, the Master of the Rolls (Sir Thomas Plumer), in reference to this subject, said: "The distinction, I apprehend, is, that against all persons claiming under the settlor, the recital [of articles] is conclusive. *Ford* v. *Gray*. 1 Salk. 285. *Marchioness of Annandale* v. *Harris*, 2 P. W. 432. *Shelly* v. *Wright*, Willes, 11—12. But it would be difficult to maintain, that a recital in a post-nuptial settlement of ante-nuptial articles, of the existence of which there is no distinct proof, would be binding on creditors. Such a doctrine would give to every trader a power of excluding his creditors, by a recital in a subsequent deed, to which they are not parties. In this instance there appears no motive for the recital, if untrue; it is a recital in a deed, executed before the party engaged in trade, when he was not indebted, and twenty years prior to his death." The settlement on another ground, was, however, held to be valid. It is conceived, however, that this case does not affect the principles before laid down. And see further, as to the operation of recitals, 2 Byth. 46; and 3 Byth. 235 and 304.

It may also be observed that, wherever on a purchase or mortgage, the title deeds are not delivered to the vendor, the recitals should be more full; because there is more probability of their being used as evidence in after times.

Statement of the payment of the consideration conclusive at common law.

Consideration. The mention of the payment of the consideration, has been always held to be conclusive at common law, although it was not in equity. See 3 Prest. Abs. 15. And although, at first view, it might seem, that the preceding case of *Lampon* v. *Corke*, had favoured another principle; yet it will be seen on examination, that the statement of the payment of the consideration referred to a recital of an agreement to pay; and it was for that reason, that evidence of its never having been paid was admitted; but the receipt of the purchase money, indorsed on the deed, was thought, in that case, to be not conclusive, as it was not under seal. It is quite clear that a receipt endorsed, if the money be not really paid, is of no avail in equity. *Coppin* v. *Coppin*, 2 P. Wms. 295.

Baker v. *Dewey*.

The subsequent case of *Baker* v. *Dewey*, 1 B. & C. 704, has, however, completely removed any doubt which might have been entertained from the case of *Lampon* v. *Corke*. The following principles relating to this point, were laid down.

Bayley, J.

Bayley, J. said. A party who executes a deed, is estopped in a court of law from stating, that the facts stated in that deed are not truly stated. In this case Baker has executed deeds, in which it is expressly stated, that the consideration for the purchase of the premises therein mentioned, had been well and truly paid. He is precluded, therefore, from saying, that any part of that money remains due, as purchase money. In fact 50*l*., which was the amount of the purchase money in the first instance; and 60*l*., part of the purchase money in

the second, were not paid. But it was stipulated that the defendant, who was a plumber and glazier, should do work in his trade, on account of the plaintiff, to that amount. The plaintiff was estopped by the deed from saying, that the amount was not paid to him as purchase money. He might be at liberty, however, to shew, that after the execution of the deed, part of the purchase money was returned, on the terms of doing certain work for the plaintiff. Assuming that that could be considered the legal effect of the agreement between the parties; which is the most favourable way of considering it for the plaintiff, the declaration in this case does not contain any count to meet such a case. The first count charges, in substance, that the defendant was indebted to the plaintiff for the purchase money of the premises sold. The plaintiff is estopped by the deed from saying, that the consideration for the purchase of the premises, was not, in fact, paid; and, therefore, that count cannot be supported.

Holroyd, J. said, By the deed the whole purchase money was acknowledged to be well and truly paid, and the defendant was released therefrom. Both parties are estopped by the deed from saying that the whole purchase-money was not paid.

Best, J. said, The deed states the purchase-money to be well and truly paid. The parol evidence is that it never was paid, but a great part of it kept back; and that fact is wholly inconsistent with the statement in the deed, and therefore ought not to have been received in evidence

Parcels. Direction as to their description.

Parcels. The parcels should, if possible, be minutely described; and their quantities, occupiers, situation, and boundaries, should all be particularized; and it is always safest to adhere to a former description; or it is advisable, if the description can be materially improved, to connect such new description with the old one, by some expression like the following: "All which said hereditaments and premises were formerly called or known by the name of," &c. And in many cases it will be oftentimes better, if the particulars cannot be given very accurately, to describe them in general terms, so that nothing may be omitted, and not to attempt to particularize; because it is a rule in the construction of deeds, that when a particular term is first employed, it shall receive no extension from a subsequent general term. *Archbishop of Canterbury's case*, 2 Co. 46. Golds. 171. And see 6 Mod. 106. Moor, 913. Cro. Jac. 57. And parol evidence will be admitted to explain a latent ambiguity in a description of parcels in a deed. *Beaumont* v. *Field*, 1 B. & A. 247; and therefore a general description may thus be assisted.

Harding v *Wilson.*

The necessity for minute accuracy in the description of the parcels is forcibly shewn by the late case of *Harding* v. *Wilson*, 2 B. & C.

96; in which the circumstances were these:—The declaration stated that the plaintiff was possessed of a dwelling house, and by reason thereof was entitled to a way from a common highway to his house, for horses, cattle, carts, and carriages; and that defendant obstructed the way by building a wall upon it. Plea, not guilty. At the trial before *Abbott* C. J., the following evidence was given:—In August 1809 the lease of a piece of ground was granted by one Sloane to W. Bolton; the abuttal on one side was described as "an intended way of thirty feet wide." The ground over which the way was to be made also belonged to the lessor. In 1811 Bolton underlet to plaintiff's landlord (one Pittard) a part of the ground so demised, "together with all ways thereto appertaining;" and it was described as abutting "on an intended way," without mentioning any width. Pittard built a house upon it, of which the plaintiff was tenant. In 1820 the defendant purchased the ground on the opposite side of the "intended way" mentioned in the first lease, and also the soil of that way, and built a wall, leaving a road only twenty-seven feet wide in front of the plaintiff's house. When the two leases above-mentioned were made, the road had not been set out, but there had been a road thirty feet wide for about four years before the alleged injury was committed. It did not appear that the plaintiff had sustained any actual injury from the erection of the wall, the road being wide enough for carriages to pass and turn round. The Lord Chief Justice observed, that the plaintiff had not a grant of a way of any particular width, and left it to the jury to say whether, under those circumstances, the wall was a nuisance. The jury found a verdict for the plaintiff, with nominal damages; and in Hilary term a rule *nisi* for a new trial was obtained, and the following judgment was thereupon delivered:—

Abbott C. J. It appeared by the evidence at the trial, that the road now left in front of the plaintiff's house was as wide as convenience required, and that the plaintiff himself declared that he had sustained no inconvenience from the erection of the wall. The landlord, however, has a right to sue in his name; but as no injury has been sustained, he cannot recover, unless he establishes his right to a road of a particular width. Adverting to the lease from Sloane to Bolton, the former does not grant a way thirty feet wide, but only describes the land demised as bounded by an intended way of that width. That is merely an expression and declaration of an intention. If, indeed, that operated as a grant, the plaintiff's right might possibly have been made out; but if it is not a grant, a departure from the intention expressed will not give a right of action, unless some actual damage has been sustained. Here the evidence negatived any such damage. I am therefore of opinion that there ought to be a new trial. Abbott, C. J.

Bayley J. I am of opinion that this question depends upon the con- Bayley, J.

struction of the original lease. Bolton had a right to some way, and he might have bargained for a road of a particular description. Without any express stipulation the law would give him a way of necessity, for the convenience of the houses which were to be built. In this case there was not any express stipulation as to the width of the way, but the abuttal was described as an intended way thirty feet wide. That was merely the intention of the owner of the soil. He does not expressly engage that the road shall be of that width. It was his intention to make it so at the time; but he uses no words that could fetter his intention, and prevent a deviation from it, provided a convenient way was left for Bolton and his under-lessees.

Holroyd, J.

Holroyd, J. The plaintiff's claim, as stated in his declaration, is of a right to pass and repass on foot and on horseback, and with cattle, carts, and carriages. He does not specify the particular width of the way; but the declaration would be sufficient, provided he proved a title to a way of thirty feet wide. The ground on which the plaintiff's house is built, and the road, also originally belonged to Sloane. When he demised it, the party renting would have no right of way but such as was incident to the lease, or such as was expressly given. Upon the evidence it appears that he still has a convenient way. But the plaintiff says, that by the lease a way thirty feet wide is given, either expressly, or by implication. It certainly is not given expressly. The intended way is no part of that which was granted; and the declaration of an intention is not an implied grant. Again, the under-lease describes the ground demised, and the ways granted, by the words "All ways thereunto appertaining." The road in question being over the soil of the original lessor, would not pass by those words. Leases generally contain the words "heretofore used," by which such a way would pass. But in the absence of them, or any words to the like effect, the under-lease would confer nothing more than a convenient way. The rule for a new trial must therefore be made absolute.

Best, J. concurred. The rule was accordingly made absolute.

Errors in description of parcels.

If any thing intended to be conveyed, is omitted in the description of the parcels in the conveyance, equity will compel the vendor to convey it to the purchaser. Prec. Cha. 307, arg. *contra Clifford* v. *Laughton*, Toth. 83, and see Sug. Vend. 295. And it has lately been decided, that if by mistake more is conveyed than was intended, such mistake would be rectified by a Court of Equity. *Beaumont* v. *Bramley*, Turn. 41, and the cases there cited.

"All the estate."

As to the clause of "all the estate," see 2 Byth. 314.

"All the deeds;" where it should be inserted.

The clause of "all the deeds" is constantly inserted by some practioners. In conveyances which operate by force of the common law, it is universally conceded to be unnecessary, as they will accompany the land without express words, except when the grantor retains any part

thereof himself. 2 Prest. Conv. citing *Field* v. *Yea*, 2 T. R. 708. Or where the grantor having entered into a warranty, when he has to defend the land, the law allows him to retain possession of the title-deeds for that purpose. *Lord Buckhurst's case*, 1 Co. 1.

In conveyances operating by force of the statute of uses.

But in a conveyance operating by force of the statute of uses, and where the releasee to uses and the purchaser are different persons, doubts have been entertained whether the common law estate of the releasee, or the estate executed by the statute, would not attract the deeds; and whether therefore an express grant of the title-deeds to the *cestui que use* is not proper in such a conveyance. Thus, says Mr. Sanders, "as the statute only transfers the legal estate to the use, it does not interfere with the title-deeds; and therefore it is a point which appears to me clearly settled, that the feoffee or grantee to uses is entitled to the custody of them." *Esofte* v. *Vaughan*, Dy. 277 a. *Stockman* v. *Hampton*, Cro. Car. 441. *Huntingdon* v. *Mildman*, Cro. Jac. 217. *Reynell* v. *Long*, Carth. 315. *Whitfield* v. *Fausset*, 1 Ves. 387—394. 1 Us. & T. 119, and the authorities cited, to which may be added, Noy. 145, fully bear out the position. Mr. Sanders has therefore adopted the clause, and Mr. Preston also recommends its adoption, 2 Conv. 466. Mr. Hargrave however has questioned the doctrine, Co. Litt. 6, a. n. 141; and it is the constant practice of many gentlemen of great eminence, never to insert this clause.

Operation of the clause.

It seems that the usual introduction of the clause of title-deeds coming in, as it usually does, immediately after the clause of "all the estate," cannot have the operation of conveying the deeds to the *cestui que use*, as they will go with the other parcels to the releasee to uses; and every other portion conveyed, except the deeds, will vest in the *cestui que use* by the operation of the statute; but according to the above cited cases *they* will remain with the releasee. No advantage, therefore, appears to be gained by the insertion of the usual clause of all the deeds. If the cases are to be regarded in practice, there should be a separate grant of the deeds to the *cestui que use*, either by the same, or by another deed; which may clearly be done, as the deeds may be even granted away from the land. Co. Litt. 232 b. And this separate grant appears to have been the ancient practice. See 1 Bridg. Conv. 23. 264.

After some reflection on the point, the conclusion arrived at is that in all purchase-deeds this clause is unnecessary; but the doubt affords an additional reason in the usual conveyance to uses to bar dower, to convey the premises to the purchaser himself, and not, as is sometimes done, to a releasee, to such uses, &c.; as if the former mode should be adopted, the deed will not be open to any question on this ground.

In a mortgage for a term, however, this clause should perhaps be inserted; as in a late case it was held, that as there was no special

contract for the delivery of the deeds, the mortgagee was not entitled to have them delivered to him on a foreclosure. *Wiseman* v. *Westland*, 1 Yo. & Jerv. 117. It seems doubtful, however, whether the usual clause of "all the deeds" would even here be of any service, as from the words of the Chief Baron on this case "a special contract" would seem to be necessary. And see 3 B. & C. 225, and 5 Dow. & Ry. 49.

Habendum. *Goodtitle* v. *Gibbs*.

Habendum. The following late case on the effect of an *habendum* in a deed may here be mentioned:—In *Goodtitle* v. *Gibbs*, 5 B. & C. 709, premises were conveyed to J. W. and to his heirs and assigns, to hold the same unto the said J. W., his heirs and assigns, from and immediately after the death of M. H., to, for, and upon the several uses, intents, and purposes thereinafter mentioned. It was held, that by the premises an immediate estate of freehold was given to J. W., and that the *habendum* had not the effect of rendering the deed void as giving a freehold *in futuro*. And the Lord C. J. Abbott delivered judgment as follows:

The objection made to the validity of the deed was that it is a grant of a freehold to commence *in futuro*; and if this be its true effect, it is undoubtedly void. The question whether this be its true effect, depends upon the operation of the *habendum*. If the *habendum* is to be considered as the operating part of the deed, the deed will be an attempt to convey a freehold *in futuro*. If the part called the premises be the operating part, and the *habendum* can be rejected, or considered only as qualifying the premises, a present freehold will pass, and the deed will be good. Many cases were quoted in the argument, to which it is not necessary to advert again. The distinction as to the effect of the *habendum* between deeds in which the premises expressly mention an estate or interest, and those in which the premises merely describe the tenements, but do not mention any estate or interest, was noted and relied upon; and it was contended that in the deed in question the premises do mention an estate and interest (as we think they do); and the case of *Carter* v. *Madgwick* was quoted, as being directly in point to the present case.

The distinction to which I allude is this: If no estate be mentioned in the premises, the grantee will take nothing under that part of the deed, except by implication and presumption of law; but if an *habendum* follow, the intention of the parties as to the estate to be conveyed will be found in the *habendum*, and, consequently, no implication or presumption of law can be made; and if the intention so expressed be contrary to the rules of law, the intention cannot take effect, and the deed will be void. On the other hand, if an estate and interest be mentioned in the premises, the intention of the parties is shewn, and the deed may be effectual without any *habendum*; and if an *habendum* follow;

which is repugnant to the premises, or contrary to the rules of law, and incapable of a construction consistent with either, the *habendum* shall be rejected, and the deed stand good on the premises.

This was done in *Carter* v. *Madgwick*, and the very learned gentleman who argued for the defendant, and against the validity of the deed, observed that the case was a solitary decision, never quoted or relied upon, and contrary to law, as it gave an immediate estate to the grantee, whereas the grantor manifestly intended to reserve a life estate to himself. Perhaps so much of the opinion of the Court as regards the exclusion of a life estate in the grantor, may be found to have been expressed without sufficiently adverting to the operation of the statute of uses, and to a construction that might have been given to the deed so as to allow a life-estate. The grantor had in fact enjoyed during life in that case as in the present. But the case of *Carter* v. *Madgwick* is not a solitary decision. The case of *Jarman* v. *Orchard* [Skin. 528. Salk. 346. Show P. C. 199.] is to the same effect.

His Lordship then stated the case of *Jarman* v. *Orchard*, and thus continued:

In the present case, we think an immediate freehold passed by the premises in the deed; and consequently the objection that the deed passed only a freehold to commence *in futuro* cannot prevail. And see also *Ware* v. *Cole*, 7 B. & C. 243.

A receipt for the purchase or mortgage money is usually indorsed on modern deeds; but it has lately been decided, that it will not be conclusive if the money can be proved not to have been paid; *Lampon* v. *Corke*, *ante*, 246. The absence of such a receipt, however, it has been said, will oblige a subsequent purchaser to inquire whether the money has been paid, as in equity it is notice of the nonpayment.

Many other observations, as to the usual parts of deeds, will also be found in the notes to the preceding and subsequent precedents.

Delivery.

The only other requisite of a deed which at present it is necessary to notice, is, VII. The Delivery. The usual expression made use of on delivering a deed is, "I deliver this as my act and deed." But any other, clearly indicative of the intention of delivery, is sufficient. Co. Litt. 36a; 9 Co. 136. And a delivery to a third person, on the behalf and for the use of him to whom the deed is made, will be good where the grantor parts with all control over the deed; and the deed will be perfect from the time of the delivery, although the person to whom the deed is so delivered be not the agent of the party for whose benefit the deed is made. *Doe* dem. *Garnons* v. *Knight*, 5 B. & C. 671; 8 Dow. and Ry. 348. And in his case it was likewise determined, that even if a party to any instrument seals it, and declares in the presence of a witness that he delivers it as his deed, but keeps it in his own possession, and there is nothing to

qualify that, or to shew that the executing party did not intend it to operate immediately, it is a valid deed. The whole subject of delivery is fully discussed in this case. But in general the delivery is to the party himself; and if it is delivered to a stranger, without any declaration or intimation that it is delivered as a deed, such a delivery would not be sufficient unless it be delivered as an escrow. 5 B. & C. 693; Touch. 57; 4 Cru. Dig. 80, 3d ed. A delivery as an escrow is where one does not deliver the deed absolutely, either to the party himself, or to another for his use, but as a scrowl or writing conditionally, that it is not to take effect until the condition be performed, when it becomes a good deed; and in this case, if the party were to get possession of it, it would not be a good deed as respects him. Moore, 300. Touch. 59. 3 Co. 356, *contra.* Com. Dig. tit. Fait. A. 3. 1 Leon. 152. It is laid down in 4 Cru. Dig. 32, citing Shep. Touch. 56, and other authorities, that there are two things in the delivery of a deed as an escrow which must be attended to. First, that the form of the words used in the delivery be apt and proper; the proper words are these: "I deliver this to you as an escrow, to deliver to the party as my deed, upon condition that he deliver 20*l.* to you for me;" or upon any other condition then mentioned. This mode of delivery ought to be taken notice of in the attestation. Secondly, that the delivery of a deed as an escrow be to a stranger; for if the person delivers a deed to the party himself to whom it is made as an escrow, upon certain conditions, the delivery is absolute, and the deed will take effect immediately; nor will the party to whom it is delivered be bound to perform the condition.

Escrow.

Position in Cru. Dig. controverted.

The first position, however, has been much questioned, if not overruled, by two late cases. The first is *Johnson and others* v. *Baker*, 4 B. and A. 440, where, before the execution of a composition deed, it was agreed, in the presence of the surety for the payment of the composition, that it should be void unless all the creditors executed it. The surety at the same interview afterwards executed the deed in the ordinary way, without saying anything at the time of execution: the deed was then delivered to one of the creditors, in order that he might get it executed by the rest of the creditors. The passage from Shepherd was cited; but the court were of opinion, the agreement, as to the execution by all the creditors, must be taken as a part of the whole transaction; and if so, that the subsequent delivery of the deed by the defendant was conditional, and not absolute on his part; and must consequently be considered as a delivery as an escrow.

Johnson v. *Baker.*

The other case alluded to is *Murray* v. *Earl of Stair*, 2 B and C. 82; in which a witness to a bond proved, that at its execution, it was agreed by all parties, before and at the time of the execution of the bond, that it should remain in the witness's hands until the death of the defendant's father, Lord Stair, and that it should not even then be delivered up to

Murray v. *Earl of Stair.*

the plaintiff until he gave up some promissory notes in his possession. Under these circumstances, it was contended that the bond was delivered as an escrow; and *Johnson* v. *Baker* was cited. Lord C. J. Abbott thought that it was a question of fact for a jury, upon the whole evidence, whether the bond was delivered as a deed to take effect from the moment of the delivery, or whether it was delivered conditionally; and that it is not essential, in order that an instrument should operate as an escrow only, that it should be expressly declared at the time of the execution, that it was not to operate as a deed until a given event happened.

It may therefore be laid down, in conclusion, that no precise form of words are necessary for the operation of a deed as an escrow, and that whether it shall so operate will be deemed a question of intention, to be determined by reference to all the circumstances of the case.

SIMPLE FORM OF RELEASE.

RELEASE *founded on a* LEASE *of Freeholds by Vendor to Purchaser, with* COVENANTS FOR TITLE, *adapted to all Circumstances* (simple Form), *with Variations for the Vendor's* WIFE *being a Party, and her* DOWER *being barred, and for the Conveyance of a* REMAINDER *or* REVERSION.

THIS INDENTURE, made the day of ; Parties. BETWEEN [*vendor*] of, &c. (*a*) of the one part; and [*purchaser*] of, &c. of the other part. (*b*) WHEREAS the said [*purchaser*] hath contracted with the said [*vendor*] for the Recitals. Contract for purchase,

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(*a*) If the vendor is married, the wife must be made a party to the deed, and a covenant to levy a fine must be inserted. Dower.

(*b*) Recitals of all the usual modes of acquiring property, and the incidents to its acquirement, are given in the succeeding precedents; and see INDEX, word *Recitals*.

SIMPLE FORM OF RELEASE.

absolute purchase of the messuages or tenements and hereditaments hereinafter described, and intended to be hereby granted and released, with the appurtenances, and the inheritance thereof, in fee simple in possession (*c*), free from incumbrances, at or for the price or sum of pounds (*d*).

and desire of purchaser.

AND WHEREAS the said [*purchaser*] is desirous that the same messuages or tenements, hereditaments and premises, should be conveyed as hereinafter is mentioned. Now

Testatum, whereby, in consideration of purchase money,

THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds (*e*) of lawful money of Great Britain and Ireland by the said [*purchaser*] to the said [*vendor*] well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt of which said sum of pounds, he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and

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Recital of seisin in fee.

(*c*) Lord Eldon has expressed an opinion that a recital of a seisin in fee amounts to a warranty of title; *Browning* v. *Wright*, 2 Bos. & Pull. 22; but this is certainly not acted on in practice. And see Co. Litt. 312 b. Lady *Cavan* v. *Pulteney*, 2 Ves. jun. 544.

Consideration.

(*d*) It is directed by the 48 Geo. III. c. 149, s. 22, that on a conveyance on a *sale*, where an *ad valorem* duty is payable, the consideration shall be set out at length.

REMAINDER OR REVERSION.

(*e*) If it be a conveyance of a remainder or reversion, the history of the title should in general be recited; and add, before "at or for the sum of *l.*,"

"but subject to the said life estate therein of the said A. B.; *or* to the estate of A. B. therein, for the term of his life," and omit the words "in possession."

In the conveyance of a remainder or reversion, as the estate is not subject to dower, the wife need not be a party. No reference to the lands as an estate in remainder or reversion need be made in the deed, except by the recitals; it will be sufficient, and the most correct plan, to convey them *subject* to the life estate. It may be proper to remind the reader, that a remainder is an estate vested in a stranger, and a reversion is part of the old estate continuing in the grantor. Co. Litt. 142 b. 143. a. 23. a. It is now more usual to convey a remainder or reversion as above, by release grounded on a lease. See 2 Byth. 96. But it is not unfrequently conveyed by the *grant*, under which title a form is given for its conveyance by that assurance.

every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, and administrators), He the said [*vendor*] *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], in his actual possession, &c. (*reference to lease for a year*) and his heirs, All that, &c. (*parcels*), *Together* with, &c. [*general words*], *And* the reversion, &c. *And* all the estate, &c. (*f*) To have and to hold the said messuages or tenements, hereditaments and all and singular the premises, with their and every of their appurtenances (*g*), unto the said [*purchaser*], his heirs and assigns, *To the use* (*h*) of the said [*purchaser*], his heirs and assigns for ever. (*i*) *And* the said [*vendor*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*purchaser*], his heirs and assigns, in manner

SIMPLE FORM OF RELEASE

vendor conveys to purchaser,

Parcels.

Habendum to purchaser in fee.

Covenant for title:

(*f*) The clause of all the deeds is unnecessary. See *ante*, 250. But if it is desired, it may be inserted. See the form, 2 Sand. Us. 226.

(*g*) If the premises conveyed be a remainder or reversion, say "appurtenances, (but subject to the estate of the said A. B. for and during the term of his natural life, *or* for and during the term of years), unto the said [*purchaser*]," &c. *as above.*

REMAINDER OR REVERSION.

(*h*) A reversion or remainder should generally be limited to uses to bar dower: as otherwise when the estate comes into possession a right to dower will attach. If therefore it is desired to be conveyed to such uses, see *ante*, p. 23, n. & *post.*

REMAINDER OR REVERSION.

(*i*) If the vendor is married, insert here a covenant to levy a fine, as *ante*, 22, and declare the use to the purchaser.

Fine.

If the vendor acquired the premises by purchase for a valuable consideration, he need only covenant for his own acts, as above, as the chain of covenants will then be complete, and the purchaser will be entitled to the benefit of those entered into with the vendor. See 2 Bos. & Pull. 22. But when he has acquired them by a voluntary conveyance, he must covenant not only for his own acts, but also for those of the last purchaser for a good or valuable consideration. See *Browning* v. *Wright*, 2 Bos. & Pul. 22. *Lloyd* v. *Griffith*, 3 Atk. 264. *Wakeman* v. *Duchess of Rutland*, 3 Ves. 233. 504. Affirmed Dom. Proc. 8 Bro. P. C. 145. If the vendor acquires the estate by devise, he must covenant for the acts

For whose acts a vendor must covenant.

SIMPLE FORM OF RELEASE.

following, that is to say; that for and notwithstanding any act, deed, matter, or thing whatsoever, by him (*k*) the said

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of himself and of the devisor; and if he takes by descent, for the acts of himself and of his ancestors. The variations in the subsequent notes therefore must be attended to.

Voluntary conveyance or devise.

(*k*) Where he claims immediately under a voluntary conveyance or a devise, say,

"by him the said [*vendor*], or by the said A. B., (*the last purchaser*), *or* by the said testator, or either of them, made," &c. *as above.*

Descent.

If he claims by descent, say,

"by him the said [*vendor*] or any of his ancestors, or any or either of them made," &c. *as above.*

Defective title.

But if there is any defect in the title, the qualification in the covenant should be omitted, and it should run,

"that he the said [*vendor*] is at the time," &c.

And in this last case, if the defect must necessarily appear on the face of the conveyance, the agreement of the purchaser to take the title subject to it should be recited; as without this it might be argued that as the defect in question was known, it must be understood to have been the agreement of the purchaser to take the title subject to the defect. See Butl. Co. Litt. 384 a. n. (1); and *Savage* v. *Whitbread*, 3 Cha. Rep. 14. But if the defect need not appear on the face of the conveyance, it is advisable that the agreement to indemnify against the defect, and the covenants to guard against it, should be entered into by a separate instrument. But it is to be remembered, that a general and unlimited covenant is restricted to the acts of persons lawfully claiming. Vaug. 122. *Dudley* v. *Folliott*, 3 T. R. 584. Except it be entered into generally against the acts of *one* person, when it will extend as well to his unlawful as his lawful acts. *Foster* v. *Mapes*, Cro. Eliz. 212. *Nash* v. *Palmer*, 5 Mau. & Selw. 374. *Fowle* v. *Welsh*, 6 B. & A. 29.; and except the *covenantor* shall himself tortiously disturb the purchaser, his heirs or assigns. *Lloyd* v. *Tomkies*, 1 T. R. 671. *Seddon* v. *Senate*, 13 East, 72.

As to the extent of the usual covenants for title, and in what cases restrictive words will extend to all the covenants in the deed, Mr. Sugden's Treatise on Vendors and Purchasers may be consulted; and it would be quite useless here to go over the same ground at length.

Who are bound by covenants for title.

Covenants for title, where there is a privity of estate, will run with the land, and will bind the heir, although he is not named therein.

SIMPLE FORM OF RELEASE.

[*vendor*] made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, he the said [*vendor*] is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of, and in, or well and sufficiently entitled to the said messuages or tenements, hereditaments and premises hereby granted and released, or intended so to be, and every part thereof, with their, and every of their appurtenances, for a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee simple (*l*), without any manner of condition, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, defeat, incumber, revoke, or make void the same (*m*). *And that* for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said vendor now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey the said messuages or tenements, hereditaments and premises, hereby

that vendor is seised in fee :

and that he has good right to convey :

Lougher v. *Williams*, 2 Lev. 92; and the executors and administrators are also bound, whether named or not, and whether the covenant relates to the realty or personalty. Touch. 177; and if the covenant will not run with the land, an express covenant with a person's *assigns* will not be of any effect as regards them. Clayt. 60. Palm. 558.; as covenants will always be construed according to their nature, and not according to the words in which they are framed. The right of action under the covenant is commensurate with the duration of the defect, and may therefore be maintained at any time by the heir or devisee of the purchaser. 4 M. & S. 53. And any breach of a covenant for title, is to be remedied by an action of covenant for damages.

The assignee of the purchaser may take advantage of covenants for title if they run with the land, although he is not named therein. Co. Litt. 384 b. 385 a. *Spencer's case*, 5 Rep. 16. *Bally* v. *Wells*, 3 Wils. 25. *Tatem* v. *Chaplin*, 2 H. B. 133. And if they do not run with the land, the assignee will not be entitled to the benefit of the covenant. See *Tempest's case*, Clayt. 60. Palm. 558. *Roach* v. *Wadham*, 6 East, 289. Sug. Vend. 563, 6th ed. And see 1 Byth. 42, n. (*b*).

REMAINDER OR REVERSION.

(*l*) "subject to the said estate of the said A. B."

(*m*) "except as aforesaid."

SIMPLE FORM OF RELEASE.

granted or released, or intended so to be, with the appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. [(*n*) *And* that it shall and may be lawful for the said [*purchaser*], his heirs and assigns (*o*), from time to time, and at all times hereafter, peaceably and quietly to enter into, hold, occupy, possess, and enjoy the said messuages or tenements, hereditaments and premises, hereby granted and released, or intended so to be, with their appurtenances, and to have, receive, and take, the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit,] without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of or by him the said [*vendor*] or his heirs, or of, from, or by any person or persons whomsoever, lawfully or equitably claiming or to claim, by, from, or under, or in trust, for him, them, or any of them (*p*) ; *And* that free and clear, freely

And for quiet enjoyment by the purchaser.

and free from incumbrances.

Premises conveyed to uses, &c.

(*n*) Where the premises have been conveyed to uses to bar dower, or to other uses and trusts, instead of the part of this covenant in brackets, insert as follows :

"And that the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, shall and may, from time to time, and at all times hereafter, remain, continue, and be, To the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore declared of and concerning the same ; And be peaceably and quietly held and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, received and taken accordingly,"

REMAINDER OR REVERSION.

(*o*) If the premises conveyed are in remainder or in reversion, say, "immediately after the determination of the estate of the said [A. B.], and at all times thereafter peaceably," &c. *as above.*

Voluntary conveyance or devise.

(*p*) If the vendor claims immediately under a voluntary conveyance or devise, say,

"any of them, or the said [*last purchaser*] *or* devisor ;"

and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [*vendor*], his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against, all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights or titles of or to dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the King's majesty, and of, from, and against, all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had and made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered, by the said [*vendor*] or his heirs, or any other person or persons lawfully or equitably claiming or to claim, by, from, under, or in trust for him, them, or any of them, (*q*) or by his or their acts, means, defaults, or procurements. *And further*, that he the said [*vendor*] and his heirs (*r*), and all and every other person or persons, having or claiming, or who shall or may hereafter have or claim, any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of, the said messuages or tenements, hereditaments and premises hereby granted and released, or

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and for further assurance.

If he claims by descent, say,

"any of them, or any of the ancestors of the said [*vendor*];" Descent.

Or if the title be defective, omit the qualification after the word "whomsoever." Defective title.

(*q*) "them, or the said [*last purchaser*] *or* [*devisor*]," Voluntary purchase or devise.
"them, or any of the ancestors of the said [*vendor*]," Descent.

If the title be defective, omit the qualification after the word "suffered." Defective title.

(*r*) The heir in tail is bound under this covenant to suffer a recovery when he comes of age. *Blicke* v. *Dymoke*, 2 Bing. 105. Heir in tail.

SIMPLE FORM OF RELEASE.

intended so to be, with their appurtenances, or any of them, or any part thereof, by, from, or under, or in trust, for him the said [*vendor*], or his heirs (*s*), shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges of the said [*purchaser*], his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things (*t*), devises, conveyances and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely granting, conveying, and assuring of the said messuages or tenements, hereditaments and premises, hereby granted and released, or intended so to be, and every part thereof, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*purchaser*], his heirs or assigns, or his or their counsel in the law, shall be reasonably devised, advised, and required; so as no such further assurance or assurances contain or imply any further or other covenant or warranty, than against the person or persons who shall be required to make and execute the same, and his or their heirs, executors, and administrators' acts and deeds, and so as the party or parties who shall be required to make such further assurance or assurances, be not compelled, nor compellable, for the making thereof, to go, or travel from

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Voluntary conveyance or devise.

Descent.

(*s*) "heirs, or the said [*last purchaser*] *or* [*devisor*]," "heirs, or any of his said ancestors."

Further assurance.

(*t*) If the purchaser has, on the completion of the title, been satisfied with the recitals in the purchase deed, and there is no fraud or misrepresentation, he is not entitled either under this covenant or on the ground of general equity, to the production of family bibles, or other papers or documents, to prove the accuracy of these recitals. *Hallet* v. *Middleton*, 1 Russ. 244. And the Vice Chancellor has lately intimated, that a purchaser is not entitled under this covenant to a covenant for the production of title deeds.

his, her, or their usual place or respective places of abode. (*u*) IN WITNESS, &c. SIMPLE FORM OF RELEASE.

SEALED, SIGNED, and DELIVERED, being first duly stamped, (*v*) by the within-named }

(*u*) No difference is made in practice as to the covenants for title, entered into by a vendor, whether he retains possession of the title deeds or not, although Mr. Fearne has argued to the contrary. Posth. 110. Vendor retaining possession of title deeds.

The only case in which a purchaser is entitled to no covenants whatsoever, is where he purchases from the crown. Sug. Vend. 472, 6th edit. Crown.

The covenants for title adopted in this precedent, are those generally used in practice; the following covenants may, however, be employed when brevity is particularly desired: they may easily be varied by reference to the other forms, to suit the particular circumstances of the case; and the first may be entirely omitted, as it is synonymous with the second. CONCISE COVENANTS FOR TITLE.

"*And* the said [*vendor*] doth hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree, with and to the said [*purchaser*], his heirs and assigns, in manner following (that is to say); that for and notwithstanding any act, deed, matter, or thing by him, the said [*vendor*], done, committed, or suffered to the contrary, he the said [*vendor*] is at the time of the sealing and delivery of these presents, lawfully and rightfully seised of and in the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, of a good, perfect, absolute, and indefeasible estate of inheritance in fee simple, without any condition, trust, proviso, limita- seised in fee.

(*v*) The duty is payable on the sum *expressed* to be the consideration. The deed is not invalidated by not having a sufficient *ad valorem* stamp; the only effect is that the parties are liable to the penalties imposed by the 48 Geo. III. c. 14, s. 22, upon persons guilty of such frauds. *Duck* v. *Braddyl*, 13 Pri. 455; and the penalties will be remitted, if the application be made within twelve months after the execution of the deed, and the commissioners be satisfied that it Stamp.

SIMPLE FORM OF RELEASE.

tion, use, or uses, power of revocation, or other matter or thing whatsoever, to alter, charge, defeat, revoke, lessen,

and that he has good right to convey;

incumber, or determine the same; *And* also, that for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said [*vendor*] now hath in himself good right, full power, and absolute authority, to grant, bargain, sell, release, and confirm the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, in manner aforesaid, according to the true intent and

for quiet enjoyment of purchaser;

meaning of these presents; *And* also that it shall and may be lawful to and for the said [*purchaser*], his heirs and assigns, from time to time, and all times hereafter, peaceably and quietly to have, hold, occupy, possess, and enjoy the said messuages or tenements, lands, hereditaments, and premises hereinbefore mentioned to be hereby granted and released, and every part thereof, with their appurtenances, and to receive the profits thereof, without the lawful let, suit, denial, interruption, disturbance, eviction, or demand whatsoever, of, from, or by the said [*vendor*] or his heirs, or any other person or persons lawfully claiming, or to claim, by, from, through, or under, or in trust for him,

free from incumbrances;

them, or either or any of them. *And that* free and clear, acquitted, exonerated, and discharged or otherwise, by the said [*vendor*], his heirs, executors, and administrators, saved, defended, and indemnified of, from, and against all former and other gifts, grants, bargains and sales, leases, jointures, dowers and titles of dower, uses, trusts, wills, entails, mortgages, judgments, extents, statutes, debts due to the King's majesty, and all other debts, titles, troubles, charges, or incumbrances whatsoever, at any time or

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was not intended to defraud the revenue; and on the payment of the penalty, as well as the duty, the stamp directed by the 55th Geo. III. c. 184, will be affixed on a deed made before that statute, the old stamp not being to be had at the office. *Doe* v. *Whittingham*, 4 Taunt. 20. But parties cannot be advised to rely on this indulgence. Every conveyance, of whatever nature it may be, whether grant, transfer, release, lease, assignment, surrender, or other assurance, of any real or personal

SIMPLE FOR M OF RELEASE.

times heretofore had, made, done, committed, or suffered by him the said [*vendor*], or by any person or persons lawfully claiming, or to claim, by, from, through, under, or in trust for him the said [*vendor*], or his heirs. *And further*, that the said [*vendor*] and his heirs, and all and every other person or persons whomsoever, lawfully claiming, or to claim, by, from, through, under, or in trust, for

and for further assurance by vendor.

AS TO THE STAMPING OF PURCHASE DEEDS.

property, is liable to the following stamp-duty. 55 Geo. III. c. 184. sched. Part I. *tit.* CONVEYANCE.

Ad valorem stamps.

Where the purchase money	£.	£.	£. s.
does not amount to -	20	.....	0 10
Where it amounts to -	20 and not to	50	1 0
	50	150	1 10
	150	300	2 0
	300	500	3 0
	500	750	6 0
	750	1,000	9 0
	1,000	2,000	12 0
	2,000	3,000	25 0
	3,000	4,000	35 0
	4,000	5,000	45 0
	5,000	6,000	55 0
	6,000	7,000	65 0
	7,000	8,000	75 0
	8,000	9,000	85 0
	9,000	10,000	95 0
	10,000	12,500	110 0
	12,500	15,000	130 0
	15,000	20,000	170 0
	20,000	30,000	240 0
	30,000	40,000	350 0
	40,000	50,000	450 0
	50,000	60,000	550 0
	60,000	80,000	650 0
	80,000	100,000	800 0
	100,000, or upwards	..	1,000 0

But the duty, it is to be remembered, is only payable on the principal, or only deed, instrument, or writing.

Feoffment and bargain and sale.

And where a feoffment, with or without letters of attorney therein contained, to deliver or receive seisin, or a bargain and sale enrolled,

SIMPLE FORM OF RELEASE.

him or them, shall and will, from time to time, and at all times hereafter, upon the reasonable request, and at the costs and charges of the said [*purchaser*], and his heirs or assigns, do, acknowledge, levy, suffer, and execute, or cause to be

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is employed, for the conveyance of freeholds, such deed will be charged with a further duty, as follows:

	£.	£.	£. s.
If the purchase money shall not amount to -	20	.....	0 10
If it shall amount to -	20	and not to 50	0 15
	50	..... 150	1 0
	150,	or upwards	1 15

But if there shall be both a feoffment and a bargain and sale enrolled, then the said further duty shall not attach on either.

Lands under different tenures or titles.

Where lands or other property of different tenures, or held under different titles, contracted to be sold at one entire price for the whole, shall be conveyed to the purchaser in separate parts or parcels, by different deeds or instruments, the purchase or consideration money shall be divided and apportioned in such manner as the parties shall think fit; so that a distinct price or consideration for each separate part or parcel may be set forth, in or upon the principal or only deed or instrument of conveyance relating thereto, which shall be charged with the said *ad valorem* duty, in respect of the price or consideration money therein set forth.

Lands sold to two or more persons.

And where any lands or other property contracted to be purchased by two or more persons jointly, or by any person for himself and others or wholly for others, at one entire price for the whole, shall be conveyed in parts or parcels by separate deeds or instruments, to the persons for whom the same shall be purchased, for distinct parts or shares of the purchase money; the principal or only deed or instrument of conveyance of each part or parcel, shall be charged with the said *ad valorem* duty, in respect of the sum of money therein specified as a consideration for the same. But if separate parts or parcels of such lands or other property shall be conveyed to and to the use of or in trust for different persons in and by one and the same deed or instrument, then such deed or instrument shall be charged with the said *ad valorem* duty, in respect of the aggregate amount of the purchase or consideration monies therein mentioned or agreed to be paid for the lands or property thereby conveyed.

Sub-purchaser.

And where any person, having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof,

done, acknowledged, levied, suffered, and executed, all and every such further and other lawful and reasonable acts and things, conveyances, and assurances in the law whatsoever, for further, more perfectly and absolutely granting, conveying, and assuring the said messuages or tene- SIMPLE FORM OF RELEASE.

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shall contract to sell to any other person, and the same shall in consequence be conveyed immediately to the sub-purchaser, the principal or only deed or instrument of conveyance shall be charged with the said *ad valorem* duty, in respect of the purchase or consideration money then mentioned to be paid, or agreed to be paid, by the said sub-purchaser.

And where any person, having contracted for the purchase of any lands or other property, but having obtained a conveyance thereof, shall contract to sell the whole or any part or parts thereof, to any other person or persons, and the same shall in consequence be conveyed by the original seller to different persons, in parts or parcels; the principal or only deed or instrument of conveyance of each part or parcel thereof shall be charged with the said *ad valorem* duty, in respect only of the purchase or consideration money which shall be then mentioned to be paid, or agreed to be paid, for the same, by the person or persons to whom or for whose use or in trust for whom the conveyance shall be made, without regard to the amount of the original purchase money. And in all cases of such sub-sales as aforesaid, the sub-purchasers, and the persons immediately selling to them, shall be deemed and taken to be the purchasers and sellers within the intent and meaning of the provisions and regulations of the act, 48 Geo. III. cap. 48, relating to the *ad valorem* duties on conveyances on the sale of property thereby imposed, and which are to be observed and enforced with regard to the said *ad valorem* duties thereby granted. But where any sub-purchaser shall take an actual conveyance of the interest of the person immediately selling to him, which shall be chargeable with the said *ad valorem* duty in respect of the purchase or consideration money paid or agreed to be paid by him, and shall be duly stamped accordingly; any deed or instrument of conveyance to be afterwards made to him, of the property in question, by the original seller, shall be exempted from the said *ad valorem* duty, and be charged only with the ordinary duty on deeds or instruments of the same kind not upon a sale.

And where any lands or other property separately contracted to be purchased of different persons, at separate and distinct prices, shall be conveyed to the purchaser, or as he shall direct, in and by one and the same deed or instrument; such deed or instrument shall be charged Lands sold to two or more persons.

SIMPLE FORM OF RELEASE.

ments, hereditaments and premises, hereinbefore granted and released, or intended so to be, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, as by the said [*purchaser*], his heirs or assigns, or his counsel in the law, shall be reasonably devised and

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with the said *ad valorem* duty, in respect of the aggregate amount of the purchase or consideration monies, therein mentioned to be paid or agreed to be paid for the same.

Money charged on land by way of mortgage.

And where any lands or other property shall be sold and conveyed, in consideration, wholly or in part, of any sum of money charged thereon by way of mortgage, wadset, or otherwise, and then due or owing to the said purchaser, or shall be sold and conveyed, subject to any mortgage, wadset, bond, or other debt, or to any gross or entire sum of money, to be afterwards paid by the purchaser, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty is paid.

Principal deed defined.

And to prevent doubts respecting what shall be deemed to be the principal deed or instrument of conveyance, in certain cases, it is hereby declared:

That where any lands or hereditaments in England shall be conveyed by bargain and sale inrolled, and also by lease and release or feoffment, with or without any such letter or letters of attorney therein contained as aforesaid; the release or feoffment shall be deemed the principal deed, and the bargain and sale shall be charged only with the duty hereby imposed on deeds in general. But the same shall not be enrolled or be available, unless also stamped, for testifying the *ad valorem* duty on the release or feoffment.

And where any lands or hereditaments shall be conveyed by lease and release, and also by feoffment, with or without any such letter or letters of attorney therein contained as aforesaid; the release shall be deemed the principal deed, and the feoffment shall be charged only with the duty hereby imposed on deeds in general. But the same shall not be available, unless also stamped for testifying the payment of the *ad valorem* duty on the release.

And where any copyhold or customary estate shall be conveyed, by a deed of bargain and sale, by the commissioners named in a commission of bankrupt, or by executors or others, by virtue of a power given by a will, or by act of parliament, or otherwise, where a surrender shall not be necessary, the deed of bargain and sale shall be deemed the principal instrument.

required; so as such further assurances do not contain any other warranty or covenant than against the person or persons who shall make or execute the same, and his, her, or their heirs; and so as the party or parties who shall

SIMPLE FORM OF RELEASE.

And in other cases of copyhold or customary estates, the surrender or voluntary grant, or the memorandum thereof respectively, if made out of court, or the copy of court roll of the surrender or voluntary grant, if made in court, shall be deemed the principal instrument.

And copies of court roll made after the 31st. Aug. 1815, of surrenders and voluntary grants made in court before or upon that day, and subsequent to the 10th Oct. 1808, shall be charged with the said *ad valorem* duties. But copies of court roll, of surrenders, and voluntary grants, made before or upon the 10th Oct. 1808, shall not be liable thereto.

And grants, and copies of court roll of grants, of copyhold or customary estates for a life or lives, are to be charged as well as those for any greater interest.

Deed stamp.

And where the principal or only deed or instrument of conveyance, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further progressive duty of 1*l.* 0*s.* 0*d.*

And where there shall be several deeds, instruments, or writings, for completing the title to the property sold; such of them as are not liable to the said *ad valorem* duty shall be charged with the duty to which the same may be liable, under any general or particular description of such deeds, instruments, or witings, contained in this schedule.

Parties shall have power to fix which is the principal deed.

And where, *in any case not hereby expressly provided for,* of several deeds, instruments, or writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to pay the said *ad valorem* duty thereon accordingly; and, if necessary, the other deeds, instruments, or writings, on which the doubt shall have arisen, shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty, upon all the deeds or instruments being produced, and appearing to be duly stamped in other respects.

Duplicates not liable to *ad valorem* stamp.

And where there shall be duplicates of any deed or instrument chargeable with the said *ad valorem* duty, exceeding 2*l.*, one of them only shall be charged therewith, and the other or others shall be charged with the ordinary duty on deeds or instruments of the same kind, not upon a sale; and upon the whole being produced, duly stamped as hereby

SIMPLE RORM OF RELEASE.

be required to make such further assurances, be not compellable, for the making thereof, to go from the respective place of his or their abode."

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required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.

Deed containing any other matter or thing liable to stamp duty.

And where any deed or instrument operating as a conveyance on the sale of any property shall operate also as a conveyance of any other than the property sold by way of settlement, or for any other purpose, or shall also contain any other matter or thing besides what shall be incident to the sale and conveyance of the property sold, or relate to the title thereto; every such deed or instrument shall be charged, in addition to the duty to which it shall be liable as a conveyance on the sale of property, and to any progressive duty to which it may also be liable, with such further stamp duty as any separate deed containing the other matter would have been chargeable with, exclusive of the progressive duty.

Exemptions.

Exemptions from the preceding duties on conveyances upon the sale of lands, &c.

All surrenders and other instruments, relating only to copyhold or customary estates, whose clear yearly value shall not exceed 20*s.*; but which are hereinafter otherwise charged.

All transfers of shares in the stocks or funds of the Governor and Company of the Bank of England, and of the South Sea and East India Companies; but which are hereinafter otherwise charged.

All leases and tacks in consideration of fine or grassum, for life or lives not exceeding three, or for a term of years determinable on a life or lives not exceeding three, by whomsoever granted.

All leases in consideration of a fine for a term absolute, not exceeding 21 years, granted by ecclesiastical corporations, aggregate or sole.

And all voluntary grants made by the lord or lady of any manor, of any copyhold or customary lands or hereditaments for a life or lives, for a pecuniary consideration, and the copies of court roll of such voluntary grants.

All which leases, tacks, grants, and copies, are hereinafter charged with the ordinary duty.

Exemptions from the preceding and all other stamp duties, except the duty on the receipt for the consideration money.

Conveyances of rents purchased under the act of the 34 Geo. III. cap. 75. s. 14, for the better management of the land revenue of the crown, and for the sale of fee farm and other unimproveable rents, upon subsequent sales thereof by the purchasers or their heirs and assigns, to the owners of the land, or other hereditaments, out of which

the same are payable; where the consideration money to be paid on such subsequent sales shall not exceed the sum of 10*l.*

Conveyance of any kind whatever, not otherwise charged in this schedule, nor expressly exempted from all stamp duty - 1*l.* 15*s.* 0*d.*

And where the same, together with any schedule, receipt or other matter put or indorsed thereon, or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further progressive duty of - - - - 1*l.* 5*s.* 0*d.*

APPOINTMENT AND RELEASE. CONCISE FORM.

APPOINTMENT(*a*) *and* RELEASE *by Vendor and his Trustee of a Piece of Land, on which the Purchaser had erected a* HOUSE AND OTHER BUILDINGS; *short Covenant to produce* TITLE DEEDS, *and special Covenants for the Use of a* LAWN *before the House, &c.* (*being peculiarly adapted to the Conveyance of an Allotment under a* BUILDING SPECULATION, *either in* LONDON *or at a* WATERING PLACE).

THIS INDENTURE, made the day of

BEWEEN [*vendor*] of, &c. gent., of the first part; [*trustee* &c. *for vendor*] (*b*) of, &c. of the second part; [*purchaser*] of, of the third part; [*trustee for purchaser*], of &c. gent., of the fourth part. WHEREAS by indentures of lease and release, dated respectively the third and fourth days of March, 1818, the release being made between [J. A.] gent., and [T. N.] merchant, of the first part; [J. C.], cooper, of the second part; [R. S.], [W. L. B.] and [G. A. S.], solicitors, of the

Parties.

Recital of indentures of lease and release, whereby the premises to be conveyed, together with other hereditaments, were conveyed to the vendor to uses to bar dower.

(*a*) This precedent, which is expressed with all reasonable brevity, was employed for the conveyance of the different houses in Regency Square, Brighton.

(*b*) See the notes to the next precedent.

APPOINTMENT AND RELEASE.

third part; the said [R. S.], of the fourth part; [J. M.], merchant, and [W. B.], warehouseman, of the fifth part; [J. R.], builder, of the sixth part; the said [*vendor*], of the seventh part; and the said [*trustee for vendor*], of the eighth part. For the considerations in the said indenture of release mentioned, the piece of land therein particularly described and mentioned to contain four pauls, and to be situate in the aforesaid, and of which the piece of ground hereinafter described, and intended to be hereby appointed and released, is part and parcel, was (amongst other hereditaments) conveyed and assured, to such uses, upon such trusts, and in such manner, as the said [*vendor*] should by any deed or writing, to be by him sealed and delivered, in the presence of, and attested by, two or more credible witnesses, direct, limit, or appoint, and in default of and until such direction, limitation, or appointment, and in the mean time subject thereto, to the use of the said [*vendor*] and his assigns, during his life, without impeachment of waste; with a limitation to the use of the said [*trustee for vendor*] and his heirs, during the life of the said [*vendor*], in trust for the said [*vendor*] and his assigns, with remainder to the use of the said [*vendor*], his heirs and assigns for ever; AND WHEREAS the said [*purchaser*] lately agreed with the said [*vendor*] for the absolute purchase of the piece of ground, hereditaments and premises, hereinafter particularly described, and intended to be hereby granted and released, with the appurtenances, and the inheritance thereof in fee simple in possession, free from all incumbrances, at the sum of pounds. AND WHEREAS the said [*purchaser*] hath, at his expense, erected upon the said piece of ground, a messuage or dwelling-house, with suitable offices and outbuildings; and hath also with the consent of the said [*vendor*] testified by his executing these presents, formed and made an area in front of the said dwelling-house, of the width of six feet six inches, and also coal vaults and cellars beyond the same, of the width of nine feet six inches, or thereabouts. AND WHEREAS upon the treaty for the purchase of the said piece of ground and premises, it was stipulated and agreed by and between the said [*vendor*] and [*purchaser*], that the said [*purchaser*] should, at his own expense, execute and deliver unto the said [*vendor*] a deed of covenant to ob-

Contract for purchase;

and that the purchaser has erected buildings on the premises.

Agreement that the purchaser should covenant to perform certain covenants.

APPOINTMENT AND RELEASE.

serve and perform certain covenants, conditions, and stipulations, in respect of the said piece of ground, messuage and premises, and which deed of covenant, it was agreed, should so be noticed in the conveyance, as to cause the same to run with the land, so far as the law would allow. AND WHEREAS, pursuant to the said stipulation and agreement, by an indenture bearing even date with these presents, and made or expressed to be made between the said [*purchaser*] of the one part, and the said [*vendor*] of the other part; the said [*purchaser*] for himself, his heirs and assigns, hath covenanted, granted, and agreed with and to the said [*vendor*], his heirs, appointees and assigns, to perform, observe and keep, and cause to be observed, performed, and kept, the several conditions, stipulations and agreements in the same indenture expressed and contained, and which on the part of the said [*purchaser*], his heirs and assigns, and all future or other owners or occupiers of the premises therein mentioned or referred to, and hereby appointed and released, are now and from henceforth for and during the full end and term of seventy-one years, from the twenty-fifth day of December 1818, are or ought to be observed, performed and kept, pursuant to the tenor and effect of the said last mentioned indenture, To the intent and purpose that the several covenants, conditions and agreements, so respectively entered into by the said [*purchaser*] in and by the same indenture, may run with the land, and charge or affect the said [*purchaser*], his heirs and assigns, and all future owners of the said piece of ground and premises, hereby appointed and released, or intended so to be, so far as the rules of law or equity will admit of; AND WHEREAS, he said [*purchaser*] is desirous that the said piece of ground, messuage and premises, should be conveyed to the uses hereinafter declared concerning the same. Now THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of . . pounds of lawful money of Great Britain and Ireland, to the said [*vendor*] in hand paid by the said [*purchaser*] at or before the execution of these presents (the receipt of which said sum of pounds, the said [*vendor*] doth hereby acknowledge, and of and from the same, and every part thereof, doth hereby

and that by an indenture of even date the purchaser had covenanted accordingly.

Desire of the purchaser to have the premises conveyed,

First witnessing part,

whereby, in consideration of purchase money, vendor appoints,

APPOINTMENT AND RELEASE.

acquit, release, and discharge the said [*purchaser*], his heirs, executors, administrators and assigns), and pursuant to, and by force and virtue, and in exercise and execution of the power or authority to him, the said [*vendor*], for this purpose given or limited by the hereinbefore recited indenture of release, and of every or any other power or authority in any wise enabling him in this behalf, *He*, the said [*vendor*], DOTH by this present deed or writing, by him sealed and delivered in the presence of the two credible persons whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivery of these presents, by him the said [*vendor*], direct, limit, and appoint, *That* the piece of ground, messuage or tenement, hereditaments and premises hereinafter particularly described, and intended to be hereby granted and released, with their appurtenances, shall henceforth remain and be, *To the uses*, upon the trusts, and for the intents and purposes, hereinafter declared, concerning the same: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance, and further performance of the said agreement, *And* in consideration of the sum of pounds, so paid to the said [*vendor*] by the said [*purchaser*], as hereinbefore is mentioned; *And* in consideration of the sum of 10*s.* of like lawful money to the said [*trustee of vendor*] paid by the said [*purchaser*], at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged) *He* the said [*trustee of vendor*], at the request and by the direction of the said [*vendor*] (testified by his executing these presents), *Doth*, by these presents, bargain, sell, and release, *And* the said [*vendor*] *Doth*, by these presents, grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], (in his actual possession now being, &c. *reference to lease for a year, &c.*) and his heirs, ALL THAT piece of ground, situate in the West Cliff Butts in aforesaid, containing, by admeasurement, on the east and west sides thereof, thirty-six feet six inches of assize, and on the north side thereof, twenty-two feet four inches, and on the south side thereof, one hundred and twenty-three feet eight inches of assize, exclusive of the six feet six inches area hereinafter mentioned, be the said dimensions, or either of them, little more or less, be-

To the uses after mentioned.

Second witnessing part.

Whereby vendor and his trustee convey.

Description of parcels;

ing part of a certain piece or parcel of land lying in the same Butts, containing four pauls, and formerly the Duke of [D.'s,] and late [F. H.'s]; *And* also all that messuage or dwelling house, and all other erections and buildings lately erected and built, and now standing and being on the said piece of ground hereinbefore described, and hereby released, or intended so to be, or on some part thereof; which said messuage, hereditaments, and premises are situate on the west side of an intended new square, called Square, in , aforesaid, and abut as follows; that is to say; to ground of the said [*vendor*], now or late in the occupation of [E. B.], on the south, to other ground now or late of the said [*vendor*], agreed to be demised to the said [*purchaser*], on the north, to the garden of Bellevue House, on the west, and to the road leading round the lawn or plot of ground in the centre of the aforesaid square on the east, together with the absolute and exclusive use and enjoyment of the area in front of the said messuage intended to be hereby conveyed, and also of the coal vaults and cellars, lately made beyond the same, as hereinbefore is mentioned, together also with the free use and enjoyment to and for the said [*purchaser*], his heirs and assigns, tenants or occupiers for the time being, of the said messuage and premises, of the road as now set out in front of the said messuage, thirty feet wide, exclusive of the foot path of the width of nine feet six inches, and of such other road or roads as shall hereafter be set out and made round the said lawn or plot of ground in the centre of the aforesaid square, either with or without horses, cattle, carts, or other carriages; and also the free use and enjoyment of the said lawn, or plot of ground, as now enclosed, agreeable to the covenant of the said [*vendor*], for that purpose hereinafter expressed and contained, together also with the free use and enjoyment of the sewer lately made by the said [*vendor*) in front of the houses on the west side of the aforesaid square, in common with the said [*vendor*], his heirs, appointees or assigns, and such other person or persons to whom he or they may grant the use thereof; *And* all and singular houses, out-houses, edifices, buildings, yards, gardens, backsides, and all other roads, ways, paths,

APPOINTMENT AND RELEASE.

together with certain peculiar privileges.

General words.

APPOINTMENT AND RELEASE.

passages, waters, watercourses, sewers, drains, cesspools, liberties, privileges, easements, profits, commodities, emoluments, rights, members and appurtenances whatsoever to the said messuage or tenement, piece or parcel of land or ground, hereditaments and premises hereby granted and released, or intended so to be belonging, or in any wise appertaining; *And* the reversion, &c., *And* all the estate, &c.

Habendum to the purchaser,

TO HAVE AND TO HOLD the said piece of ground, messuage or dwelling-house, hereditaments, and all and singular other the premises, hereby granted and released, or intended so to be, and every part thereof, with their, and every of their appurtenances, unto the said [*purchaser*] and his heirs and assigns, *To the uses*, upon the trusts, and for the intents and purposes hereinafter limited or declared concerning the same. *And* it is hereby agreed and declared between and by the parties to these presents, that the direction, limitation and appointment, grant, release and confirmation or other assurance, hereinbefore contained, and hereby made, as aforesaid, shall operate and enure to the use of the said [*purchaser*] and his assigns, during the term of his natural life, without impeachment of or for any manner of waste; *And* after the determination of that estate, by forfeiture or otherwise in his life time, to the use of the said [*trustee for purchaser*] and his heirs during the life of the said [*purchaser*], *In trust* for the said [*purchaser*] and his assigns, and to prevent any wife of the said [*purchaser*] from being entitled to dower in or out of the premises, or any part thereof; *And* immediately after the determination of the estate hereinbefore limited to the said [*trustee for purchaser*) and his heirs, during the life of the said [*purchaser*] as aforesaid, *To the use* of the said [*purchaser*], his heirs and assigns for ever; *And* the said [*trustee for vendor*] doth hereby for himself, his heirs, executors and administrators, COVENANT and declare with and to the said [*purchaser*], his heirs and assigns, that he the said [*trustee for vendor*] hath not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby, or by means whereof, the said piece of ground, messuage, hereditaments and premises hereby

to uses to bar dower.

Covenant by trustee for vendor against incumbrances.

appointed and released, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be, in any wise impeached, charged, affected or incumbered, in title, estate, or otherwise howsoever; *And* the said [*vendor*] doth hereby for himself, his heirs, executors and administrators, COVENANT and agree with and to the said [*purchaser*], his heirs and assigns, by these presents, in manner following (that is to say): *That* notwithstanding any act (*a*), deed, matter or thing whatsoever, by the said [*vendor*] made, done, committed, executed, or knowingly or willingly suffered to the contrary, the power or authority hereinbefore exercised and created by the hereinbefore recited indenture of release of the 4th day of March, 1818, is, at the time of the execution of these presents, in full force and virtue, and in no wise suspended, extinguished, merged, or become void or voidable; *And* that they the said [*vendor*] and [*trustee for vendor*], or one of them, now have or hath, in themselves or himself, good right, full power, and lawful and absolute authority, to direct, limit and appoint, grant, release and convey, the said piece of ground, messuage, hereditaments and premises hereby appointed and released, or intended so to be, with their appurtenances, *To the uses* and in manner aforesaid, and according to the true intent of these presents: *And* that notwithstanding any such act, deed, matter or thing as aforesaid, it shall be lawful for the said [*purchaser*], his heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to have, hold, occupy, possess, and enjoy the same piece of ground, messuage, hereditaments and premises, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without the lawful let, suit, trouble,

APPOINTMENT AND RELEASE.

Covenants by vendor,

that the power is good;

that the vendor and trustee have good right to convey;

for quiet enjoyment;

(*a*) Where a vendor has a power of appointment, the first covenant ought to be, that the power was well created, and is subsisting; and the other covenant will be similar to those entered into by a grantor in fee, except that the words of reference will be "appointed, granted," &c. and "appointing, granting," &c. as above, and except that the first covenant for a seisin in fee is generally omitted.

That the power is good.

APPOINTMENT AND RELEASE.

denial, eviction, interruption, claim or demand whatsoever, of or by him the said [*vendor*], or his heirs, or of or by any other person or persons lawfully or equitably claiming, or to claim by, from or under, or in trust for him or them, or any of them; *And* that free and clear, and freely and clearly, and absolutely acquitted, released, and for ever discharged, or otherwise, by the said [*vendor*], his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all former and other gifts, grants, bargains, sales, appointments, jointures, dowers, uses, trusts, intails, wills, statutes, recognizances, judgments, executions, extents, rents, annuities, and of, from, and against all other charges and incumbrances whatsoever, either already or hereafter to be had, made, executed, occasioned, or suffered by the said [*vendor*] or his heirs, or by any other person or persons lawfully or equitably claiming, or to claim, by, from or under, or in trust for him, them, or any of them: *And further*, that he the said [*vendor*] and his heirs, and all and every other person or persons having or claiming, or who shall or may hereafter have or claim, any estate, right, title, or interest whatsoever, either at law or in equity, in, to, or out of the said piece of ground, messuage, hereditaments and premises, hereby appointed and released, or intended so to be, or any of them, or any part thereof, by, from or under, or in trust for the said [*vendor*] or his heirs, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*purchaser*], his heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful acts, deeds, things, devices, appointments, conveyances, and assurances in the law whatsoever, for the better, more perfectly and absolutely appointing, granting, conveying and assuring of the said piece of ground, messuage, hereditaments and premises, hereby appointed and released, or intended so to be, and every part thereof, with their appurtenances, *To the uses*, and in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*purchaser*], his heirs or assigns, or his or their counsel in the law, shall be reasonably devised, advised, and re-

free from incumbrances;

and for further assurance.

quired, so as no such further assurance or assurances contain, or imply, any further or other covenant, or warranty, than against the person or persons who shall be required to make or execute the same, and his, her, or their heirs, executors or administrators' acts and deeds, and so as the party or parties who shall be required to make or execute such further assurance, or assurances, be not compelled or compellable to travel from his, her, or their usual place or places of abode: *And moreover*, that he the said [*vendor*], his heirs, appointees, and assigns (unless prevented by fire or other inevitable accident), shall and will from time to time, and at all times hereafter, upon the request, and at the costs and charges of the said [*purchaser*], his heirs or assigns, produce and shew forth, and cause and procure to be produced and shewn forth, unto the said [*purchaser*], his heirs or assigns, or to his or their attorney, solicitor, agent, or counsel, or at any trial or hearing, in any court of law, equity, or other judicature, or on the execution of any commission for the examination of witnesses, or otherwise, as occasion shall require, all and every or any of the several deeds, instruments, and writings, which are specified in the schedule thereof hereunder written, for the manifestation, defence, and support of the estate, title, and possession of the said [*purchaser*], his heirs or assigns, to said piece of ground, hereditaments and premises, hereinbefore appointed and released, or for any other reasonable purpose; *And* at the like request, costs and charges, make and deliver, or cause to be made and delivered, a true and attested or other copy or copies, abstract or abstracts, of the same deeds, instruments and writings, respectively, or any of them; *And* permit and suffer, or cause and procure such copies or abstracts to be examined and compared with the original deeds, either by the said [*purchaser*], his heirs or assigns, or by such person or persons as he or they shall from time to time for that purpose direct: PROVIDED NEVERTHELESS, and it is hereby agreed and declared by and between the said [*vendor*] and [*purchaser*], that if the other hereditaments and premises, to which the said deeds, instruments, and writings respectively refer, shall hereafter be sold, or otherwise absolutely disposed of, and the said [*vendor*]

and that vendor will produce title deeds.

Proviso for the avoidance of the last covenant on obtaining a similar one.

APPOINTMENT AND RELEASE.

shall procure the purchaser or purchasers thereof to enter into a like covenant to that which is hereinbefore contained with the said [*purchaser*], his heirs and assigns, for the production of the said deeds, instruments, and writings to him and them, then, and in that case, the covenant and agreement hereinbefore contained for that purpose, shall from thenceforth wholly cease, and be void. *And* the said [*vendor*] doth hereby, for himself, his heirs, executors and administrators, further covenant, promise, grant and agree with and to the said [*purchaser*], his heirs and assigns, in manner following (that is to say); that he the said [*vendor*], his heirs, appointees and assigns, shall and will, at all times hereafter, permit and suffer the lawn in the middle of the said square, called the Square, to be used as and for a pleasure ground only, and that it shall and may be lawful to and for the said [*purchaser*], his heirs and assigns, or other the occupier or occupiers for the time being, of the said messuage and premises hereinbefore appointed and released, or intended so to be, and his, her, or their family, either alone, or with any visitors or friends in his, her, or their company, at all times hereafter, to enter into and upon the said lawn, and use the same as a pleasure ground, he, she, and they doing no injury to the same, and paying a fair and equal proportion of the expenses of keeping the same, and the fences, locks, and gates thereof, in repair and good condition; and observing the orders and regulations to be from time to time made by the committee, to be appointed in the manner expressed in the said recited indenture, of even date herewith, respecting the same; *And further*, that he the said [*vendor*], his heirs, appointees, and assigns, shall not, nor will, at any time hereafter, erect or build, or permit or suffer to be erected or built, on the south side of the said square, facing the sea, any house or buildings whatsoever, so as to contract the opening from front to front of the houses on the east and west sides of the said square, to a space of less than 229 feet; it being the intent and meaning of the parties hereto, that except as to the said lawn and the fences thereof, a clear and uninterrupted view may, at all times, be preserved towards the sea, from the said messuage or tenement hereby appointed and released; *And*

Covenant by vendor that he will permit the lawn before the house to be used only as a pleasure ground;

and that it shall be lawful for purchaser and his assigns, &c. to use the said lawn.

and that vendor will not obstruct sea view;

APPOINTMENT AND RELEASE.

further, that in any building or buildings whatever, which may be hereafter erected, adjoining southward to the said messuage or tenement hereby appointed and released, or intended so to be, and between the same and the road leading to , he the said [*vendor*], his heirs, appointees, or assigns, shall not erect or build, nor consent to, or authorize to be erected or built, any projection from the eastern front, except a portico, further than the projections from the said messuage or tenement hereby appointed and released: *And further*, that he the said [*vendor*], his heirs, appointees, and assigns, shall and will, at all times hereafter, upon every reasonable request, but at the costs and charges of the person or persons requiring the same, make, do, and execute, or cause to be made, done, and executed, all such acts, deeds, conveyances, and assurances, for the better securing to the said [*purchaser*], his heirs and assigns, such use and enjoyment of the said lawn, and such uninterrupted view of the sea, as aforesaid, as by the said [*purchaser*], his heirs and assigns, or his or their counsel, shall be reasonably advised and required, so as for the making, doing, or executing thereof, the said [*vendor*], his heirs, appointees, or assigns, be not compelled or compellable to go or travel from his or their usual place or places of abode; nor covenant, grant, or agree, further than for himself and themselves, and his and their acts and deeds only (*a*). IN WITNESS, &c.

and that he will not erect any projection further than the projection of the premises conveyed.

and for further assurance of the use of the lawn and view of the sea.

(*a*) The object of the usual limitation to uses to bar dower, is to give the purchaser a complete command over his estate, and at the same time to leave it unaffected by the dower of his wife. The uses limited in default of appointment are vested, although liable to be divested by the execution of the power; 1 Ves. 174. 4 T. R. 39; and whilst the purchaser retains possession, he has every beneficial enjoyment of his property.

Object of the usual uses to bar dower.

If he wishes to convey his estate to another, he may exercise his power, and the limitation under it will take effect by way of shifting use. Or he may convey his interest, and with the concurrence of his trustee, he may convey an entire estate in fee simple; and if this concurrence is not easily to be obtained, he may alone convey his interest; and the only inconvenience will be, that the legal remainder

to the trustee, which is a vested remainder, 3 Lev. 437, will be outstanding; but as this is rather a formal than a substantial objection, it may in most cases be safe to rely upon the conveyance of the vendor alone. The vendor may, however, and this is the more usual plan in practice, exercise his power, and also convey his interest; but if the trustee join, no purpose will be answered by the exercise of the power; and another reason has lately arisen why the purchaser should rely alone upon the release of the interest of the vendor. It is a well known rule, that in order that a covenant may run with the land, that is to say, that it may bind the representatives of the covenantor, and be available by the representatives or assignees of the covenantee, there must be a privity of estate between the covenanting parties. *Webb* v. *Russell*, 3 T. R. 393. *Stokes* v. *Russell*, 3 T. R. 678. 1 H. B. 562, S. C. and the purchaser must take the estate of the original purchaser, and come in under him, or he will not be entitled to the benefit of the covenant entered into with such purchaser; neither will he be bound by the covenants entered into by such purchaser.

In order that covenant should run with the land, privity of estate is necessary.

This principle was first laid down in the case of *Roach and another* v. *Wadham*, 6 East, 289, the circumstances of which case were as follow:

Roach v. *Wadham.*

By indentures of lease and release the plaintiffs conveyed an estate to A. B. and his heirs, to such uses as Watts should appoint, and in default of appointment, to Watts in fee; and in the same conveyance a fee farm rent was reserved to the plaintiffs, which rent Watts for himself, his heirs and assigns, covenanted to pay. Afterwards, by indentures of lease and release, A. B.* by the direction of Watts, released, and Watts granted and confirmed, and also directed and appointed to Wadham and others in fee as tenants in common, and by the same indenture, Wadham and the others covenanted with Watts to pay the fee-farm rent; and the plaintiffs brought an action against the representatives of Wadham to recover the fee-farm rent. And it was held that the purchaser took the estate by the appointment of, and not by the conveyance from, Watts, the instruments (lease and release) though more properly adapted to pass an interest, and containing words of grant for that purpose, yet professing in terms to be an appointment; and it being obviously for the benefit of the purchaser to take by appointment, and such appearing upon the whole to have been the intention of the parties; and that Wadham, and consequently

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* A. B. was merely a releasee to uses in the first deed. It is difficult therefore to see why he joined in this conveyance, having only a momentary seisin: Lord Ellenborough, however, laid considerable stress, in his judgment, on the fact of his concurrence.

the defendant, his representative, was not liable under the covenant for the payment of the fee-farm rent of Watts, the original purchaser.

The reason that the covenant of Watts did not bind Wadham or his representatives was, that they did not take Watts's estate, but took an estate which arose out of the seisin of A. B., the releasee to uses, and came in paramount to the estate of Watts. The difficuly in this case, therefore, will be obviated by conveying the estate, as above, to the purchaser himself, to such uses as he shall appoint, and covenanting with the purchaser. The covenant will then run with the land, as the purchaser will take an estate which will arise out of the seisin of the purchaser. Another mode adopted in practice (although not so convenient or proper) is to covenant for title with the releasee to uses, and to let a nominal consideration come from him. Either the one course or the other should always be adopted, where the power is exercised, either alone or together, with a release of the interest. It is not uncommon, however, amongst the most prudent conveyancers, to rely alone upon a release of the interest.

The difficulty arising in this case obviated.

It was decided as early as *Clere's case*, Rep. 17. Cro. Eliz. 877. Cro. Jac. 31, that if a person has both an interest and a power, and no reference is made in a conveyance to the power, the interest alone shall be construed to be conveyed. And where the operative words, as well as the words of conveyance, are also introduced, if it will effectuate the intention of the parties, the power shall be deemed *not* to be executed; *Cox* v. *Chamberlain*, 4 Ves. 63. And see *Parker* v. *Kett*, 12 Mod. 469; *Andrews* v. *Emmett*, 2 B. C. C. 800; *Collet* v. *Bishop of Coventry*, Hob. 159.

Persons having both an estate tail and a power.

Another difficulty on this head, which is not so easily provided for, may here be mentioned; and the reference to it by Mr. Sugden, may be quoted: "The proposition," says that gentleman, "that it is not sufficient that a covenant is concerning the land, but in order to make it run with the land there must be a privity of estate between the covenanting parties, seems to apply as well to covenants entered into by the vendor as to covenants entered into by the purchaser. But the consequences of this doctrine are truly alarming. In a great proportion of cases the vendor has either mortgaged the estate in fee, or is a mere *cestui que trust*; and if his covenants were to be deemed covenants in gross, the assignees of the land could only compel performance of the covenants by the circuitous mode of using the name of the first purchaser, or his representatives, whom at the distance of some years it might be very difficult to trace;" Sug. Vend. 562, 7th ed.; and he advises, that in cases of this nature, the purchaser should insist upon the reconveyance of the legal estate to the vendor, before the latter conveys to him.

Persons covenanting having the legal estate.

This doubt, however, is certainly not acted upon to any extent in practice. It is the constant practice of conveyancers to make vendors

and *cestui que trusts*, bankrupts, and others, having mere equitable estates, covenant for the title; and although there is at present no decision on the subject, it is to be reasonably depended upon, that should the question ever come before the courts, they would act in conformity to the established practice of the profession; and not according to what might certainly be contended to be the strict legal principle; as such an adherence would invalidate half the titles of the country.

As to divesting uses by exercise of the power.

Another difficulty sometimes arises on these limitations to bar dower, where only a portion of the premises is conveyed. Thus, where an estate stands limited to such uses as the vendor shall appoint, and in default of appointment to the usual uses to bar dower, and a part of the estate is sold for building purposes, with a stipulation that the remainder, or some other part thereof, shall not be built upon, or shall be converted into a lawn, square, garden, or pleasure ground, for the use of the inhabitants of the houses intended to be erected on the land sold, it may be advisable, that prior to the conveyance to the purchaser, the vendor should, by an exercise of his power, appoint that the land which is not to be built upon, or which is to be converted into a lawn, &c. shall remain, to the use of the vendor and his assigns during his life, with remainder to a trustee to bar dower, remainder to himself in fee; as by this limitation the possibility of defeating the vendor's covenants by a future exercise of his power is prevented.

OF FREEHOLDS BY VENDOR AND TRUSTEE TO PURCHASER AND TRUSTEE. VARIATIONS, &c. TERM.

APPOINTMENT *and* RELEASE *of* FREEHOLDS *by Vendor and Dower* TRUSTEE *to Purchaser and his Trustee to uses to* BAR DOWER; *with Variations for the circumstances of the Vendor conveying* ALONE; *for* BUILDINGS *having been erected since the last Conveyance; for the Consideration being an* ANNUITY *to Vendor; and for the* ASSIGNMENT *of a* TERM TO ATTEND, *and of a* TERM *to* MERGE, *in the same Deed as the Grant.*

Parties.

THIS INDENTURE, made, &c. BETWEEN [*vendor*] of, &c. of the first part; (*a*) [*trustee of vendor to bar dower*] of, &c. of the second part; [*purchaser*] of, &c. of the third part; and [*trustee of purchaser to bar dower*] of, &c. of the fourth part (*b*).

Indentures of lease and release, and a fine, whereby premises are conveyed to such uses as vendor shall appoint, and in default, to uses to bar dower.

WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , the release being made, or expressed to be made, between A. B. gentleman, and Mary his wife, of the first part; the said [*vendor*] of the second part; and the said [*trustee of the vendor*] of the third part; and by a fine *sur conuzance de droit come ceo*, &c. duly acknowledged and levied by the said A. B. and Mary his wife, in or as of Term , in pursuance of a covenant entered into for that purpose by the said A. B., in and by the said indenture of release, and by force of a declaration of the uses of the said fine in the same indenture contain-

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Where the vendor conveys alone.

(*a*) If the dower trustee can be found, he is invariably made a party; if he cannot be discovered, his joining is immaterial, and may be safely dispensed with. If he does not join, the purchaser will of course be of the second part, and his trustee of the third.

Term.

(*b*) If a term is assigned in the same deed, say,

"Z. Z. [*trustee of the term for vendor*] of &c. of the fifth part, and Y. Y. [*trustee of the term for purchaser*] of &c. of the sixth part;"

OF FREEHOLDS BY VENDOR AND TRUSTEE TO PURCHASER AND TRUSTEE.

ed; the messuages or tenements, lands and hereditaments, hereinafter described and intended to be hereby appointed and released, with their appurtenances, were (for the considerations in the said indenture of release mentioned) conveyed to such uses, upon such trusts, for such intents and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said [*vendor*] should, by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, from time to time direct, limit, or appoint. And in default of, and until such direction, limitation, and appointment, to the use of the said [*vendor*] and his assigns, during his life, with a limitation to the use of the said [*trustee of vendor to bar dower*], and his heirs, during the life of the said [*vendor*], in trust for him the said [*vendor*] and his assigns, during his life, with remainder to the use of the said [*vendor*], his heirs and assigns for ever. (*c*) AND WHEREAS the said [*purchaser*] hath contracted and agreed with and to the said [*vendor*], for the absolute sale to him the said [*purchaser*] of the messuages or tenements, lands, hereditaments, and premises hereinafter described, and intended to be hereby appointed and released, with their appurtenances, and the fee simple and inheritance thereof, in possession, free from incumbrances, at or for the price or sum of pounds. AND WHEREAS the said [*purchaser*] is desirous that the said messuages or tenements, lands, hereditaments, and premises, should be conveyed and limited to the uses hereinafter expressed or declared of and concerning the same;

Contract for the purchase.

Parcels described in recitals, buildings erected, term assigned.

(*c*) Where the parcels are described in the recitals, or a term is assigned in the same deed, or buildings have been erected since the date of the last conveyance, the following recitals should be introduced:

Lease and release, whereby the parcels are described in the recitals.

"WHEREAS by indentures of lease and release bearing date respectively on or about the days of , the release being made, or expressed to be made, between the said J. E. &c. &c. All that &c. [*set out the parcels*], with the appurtenances, were (in consideration of the sum of pounds of lawful money of Great Britain and Ireland,

NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and

OF FREEHOLDS BY VENDOR AND TRUSTEE TO PURCHASER AND TRUSTEE.

by the said [*vendor*] to the said J. E. paid, as in the said indenture of release now in recital is mentioned) conveyed to such uses &c." *as above.*

Where the term is assigned in the same deed.

If the term is assigned either to attend or merge in the same deed in which the inheritance is conveyed, the history of the title of this term will be recited, together with that of the inheritance. For recitals of the usual deeds creating terms, see INDEX, RECITALS. The recital of the last assignment of the term may be as follows. The propriety of assigning a term in the same deed will be considered in a subsequent note.

"And by the said indenture of release now in recital, the said piece or parcel of land or ground, hereditaments and premises, thereinbefore described, and thereby granted and released, with their appurtenances, were assigned by the said [*trustee of a term for J. E.*] unto the said [*trustee for vendor*], his executors, administrators, and assigns, for and during all the then residue and remainder of a term of 500 years created therein, as in the said indenture of release now in recital is mentioned, In trust, nevertheless, for the said [*vendor*], his heirs, appointees, and assigns, to attend the inheritance."

Where the term is assigned in the same deed to attend, say,

Term to attend.

"AND WHEREAS it hath been agreed that the said [*Z. Z.*] should assign the said messuages or tenements, lands, hereditaments, and premises, for the residue of the said term, unto the said [*Y. Y.*] his executors, administrators, and assigns, upon the trusts hereinafter mentioned concerning the same."

Or if the term is to be assigned to merge, say,

Term to merge.

"AND WHEREAS it hath been agreed that the said term of five hundred years should be assigned to the said [*purchaser*], in order that the same may be merged in the freehold inheritance or reversion of the said messuages or tenements, hereditaments and premises, in the manner hereinafter mentioned."

OF FREEHOLDS BY VENDOR AND TRUSTEE TO PURCHASER AND TRUSTEE.

in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] in hand well and truly paid at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of the said [*vendor*] doth hereby admit and acknowledge, and of and from the same and every part thereof, doth hereby acquit, release, and for ever discharge, the said [*purchaser*], his heirs, appointees, executors, administrators, and assigns,) and pursuant to, and by force and virtue, and in exercise and execution of the power or authority to him for this purpose given or limited by the hereinbefore in part recited indenture of re-

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Erection of buildings.

"AND WHEREAS since the execution of the said hereinbefore recited indentures, the said [*vendor*] hath erected and built upon the said piece or parcel of land or ground therein comprised, divers messuages or tenements, and divers houses, with suitable offices and outbuildings thereto," [*then contract for purchase, as above; the reference of the parcels throughout the deed being* "the said piece or parcel of land or ground and the messuages or tenements erected thereon, hereinbefore described, and intended to be hereby appointed and released]."

Where an annuity is the consideration of the purchase, the following recitals should be inserted.

Recital, &c. where an annuity is the consideration for the purchase.

Contract for purchase, and that in consideration thereof purchaser agrees to pay an annuity.

"AND WHEREAS the said [*purchaser*] hath contracted with the said [*vendor*] for the absolute purchase of the said messuages or tenements, lands, hereditaments and premises, hereinafter described, and intended to be hereby appointed and released, with the appurtenances, and the inheritance thereof in fee simple in possession, in consideration of an annual rent or sum of pounds to be paid to the said [*vendor*] and his assigns, for and during the term of his natural life, by four equal quarterly payments in every year, the first quarterly payment thereof to be made on the day of now next ensuing: AND WHEREAS it hath been agreed, that the said annual rent or sum should be charged upon the said messuages or tene-

and that the annuity shall be charged upon

lease, and the fine levied in pursuance thereof, and of every or any other power or authority in any wise enabling him in this behalf, HE the said [*vendor*] *Doth* by this present deed or writing, by him sealed and delivered in the presence of the two credible persons whose names are intended to be hereupon indorsed as witnesses, attesting the sealing and delivery of these presents by him the said [*vendor*], OF FREEHOLDS, BY VENDOR AND TRUSTEE TO PURCHASER AND TRUSTEE.

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ments, lands, hereditaments, and premises, hereinafter described and intended to be hereby appointed and released, with the appurtenances *. *And* that the said [*purchaser*] should execute all proper and necessary conveyances and assurances for effectually charging the same hereditaments and premises with the said annual rent or sum, and that the payment of the said annual rent or sum of should be further secured by the bond† and warrant of attorney of the said [*purchaser*], in such manner and form as the counsel of the said [*vendor*] shall advise. AND WHEREAS the said [*purchaser*] is desirous that the said messuages or tenements, lands, hereditaments, and premises, should be appointed and released in such manner as hereinafter is mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said annual rent or sum of pounds, to be paid and ‡ secured in the manner

the premises, and be secured by the bond and warrant of attorney of the purchaser.

Desire of purchaser to have the premises conveyed.

Testatum, whereby, in consideration of annuity, vendor conveys

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* See a form of such a grant, 2 Byth. 137. Where the consideration for an annuity is an estate in land, the grant does not require enrolment. *James* v. *James*, 2 B. & B. 702. 1 Byth. 336. 2 Byth. 325. Enrolment.

† See a form of such a bond, 1 Byth. 496. Where an estate is sold in consideration of an annuity, and no mention is made of any security for it, he is entitled to have it secured upon the estate, and also to have the bond of the purchaser, and a judgment to be entered up against him. 2 Anst. 550. bond, &c.

‡ Although the vendor were to die before the conveyance was executed, and consequently before he had received any part of the annuity, the purchaser would still be entitled to a specific performance of the contract, provided he had been guilty of no *laches*, and had tendered any instalment of the annuity which had become due. 1 B. C. C. 156. 1 Pri. 292. *Coles* v. *Trecothick*, 9 Ves. jun. 246. 7 B. P. C. 184. Vendor dying.

OF FREEHOLDS, BY VENDOR AND TRUSTEE TO PURCHASER AND TRUSTEE.

direct, limit, and appoint, THAT the messuages or tenements, lands, hereditaments and premises hereinafter described, and intended to be hereby granted and released, with their appurtenances, shall henceforth go, remain, and be, To the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed or declared of or concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the sum of , so paid by the said [*purchaser*], as hereinbefore is mentioned, and in consideration of the sum of ten shillings of like lawful money by the said [*purchaser*] to the said [*trustee of the vendor to bar dower*], paid at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), *He* the said [*trustee of vendor*], at the request and by the direction of the said [*vendor*], (testified by his being a party to, and sealing and delivering these presents) *hath* bargained, sold and released, and by these presents *doth* bargain, sell, and release, and *He* the said vendor *hath* granted, bargained, sold, aliened, released, and confirmed, and by these presents *doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*] (in his actual, &c.) and his heirs, All (*a*)&c. [*parcels, and general words.*] And the reversion

Parcels.

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hereinbefore mentioned. HE the said [*vendor*]" &c. *as above.*

Vendor's lien.

If it is intended that the vendor should have no lien for his purchase money on the estate, but should rely wholly on the security of his bond, a declaration to that effect should be inserted at the end of the deed; because, although he takes a bond or promissory note, he will still retain his lien; 2 Eq. Ca. Ab. 682. 2 Ves. 389. 1 Sim. & Stu. 444. 1 Madd. 346.; unless it be otherwise expressed.

(*a*) Where the parcels are described in the recitals, say,

Where the parcels are described in the recitals.

"ALL that and those, the said messuage or tenement, pieces or parcels of land, hereditaments, and premises, described in and conveyed by the said hereinbefore recited indentures of the and days of , with their and every of their appurtenances."

and reversions, remainder and remainders, yearly and other rents, issues, and profits of the same messuages or tenements, lands, hereditaments, and premises, and every part thereof, And all the estate, right, title, interest, inheritance, use, trust, possession, property, possibility, claim, and demand whatsoever, both at law and in equity, of them the said [*vendor*] and [*trustee of vendor*], and each of them, of, in, to, from, and out of the said premises, and every part thereof, To HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby appointed and released, or intended so to be, with their appurtenances, unto the said [*purchaser*] and his heirs, to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed or declared of or concerning the same. [*Covenant from trustee of vendor that he has done no act to incumber. Ante*, 276.] And it is hereby agreed and declared, between and by the parties to these presents, that the direction, limitation and appointment, grant, releases and confirmation hereinbefore contained, and hereby respectively made as aforesaid, shall operate and enure to such uses, upon such trusts, to and for such intents and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said [*purchaser*] shall by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered, in the presence of, and to be attested by, two or more credible witnesses, from time to time, direct, limit, or appoint; and in default of, and until such direction, limitation, or appointment, and so far as every or any such direction, limitation, or appointment, shall not extend, To the use of the said [*purchaser*] and his assigns, during his life, without impeachment of waste; and after the determination of that estate by forfeiture or otherwise, in his lifetime, to the use of the said [*trustee for purchaser*] and his heirs, during the life of the said [*purchaser*], in trust for him the said [*purchaser*] and his assigns, during his life, and to the end and intent that neither the present, nor any future wife of the said [*purchaser*], may become intitled to dower in or out of the said premises, or any part thereof;

OF FREEHOLDS, BY VENDOR AND TRUSTEE TO PURCHASER AND TRUSTEE.

Habendum.

To purchaser.

To uses to bar dower.

OF FREEHOLDS, BY VENDOR AND TRUSTEE TO PURCHASER AND TRUSTEE.

and immediately after the determination of the estate hereinbefore limited to the said [*trustee of the purchaser*] and his heirs, during the life of the said [*purchaser*], to the use of him the said [*purchaser*], his heirs and assigns for ever. (*Covenants by vendor with the purchaser, that the power is good, and for title, as ante*, p. 277-278.) (*a*). IN WITNESS, &c.

Covenant for title by vendor with trustee.

(*a*) Where a term is to be assigned or merged in the same deed, the following witnessing part may be introduced;

Assignment of term to attend the inheritance.

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and also in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland by the said* [*Y. Y.*] to the said [*Z. Z.*], at or immediately before the sealing and delivery of these presents paid, (the receipt whereof is hereby acknowledged) HE the said [*Z. Z.*], at the request and by the direction of the said [*vendor*]†, [and upon the nomination of the said [*purchaser*],] (testified by their respectively being parties to and sealing and delivering these presents)‡ *Hath* bargained, sold, and assigned, and by these presents *doth* bargain, sell, and assign, unto the said [*Y. Y.*], his executors, administrators, and assigns, All and singular the said messuages or tenements, lands, hereditaments, and premises hereinbefore described and hereby appointed and released, or intended so to be, and so assured to the said [*Z. Z.*], his executors, administrators, and assigns, by the said recited indenture of the day of , as hereinbefore is mentioned, with their appurtenances; And all

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TERM TO MERGE.

* If the term is assigned to merge, say, "by the said [*purchaser*] to the said [Z. Z.]"

TERM TO MERGE.

† If the term is assigned to merge, say, "and upon the acceptance of the said [*purchaser*],"

TERM TO MERGE.

‡ "*Hath* bargained, sold, assigned and surrendered, and by these presents *Doth* bargain, sell, assign, and surrender unto the said [*purchaser*], his heirs and assigns,"

OF FREEHOLDS, BY VENDOR AND TRUSTEE TO PURCHASER AND TRUSTEE.

the estate, &c.§ To HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [*Y. Y.*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired, of the said term of years created therein by the said indenture of the day of , as aforesaid, In trust, nevertheless, for the said [*purchaser*], his heirs and assigns, to assign and dispose of the same, as he or they shall, from time to time, order or direct, and in the mean time, In trust to permit the same term to wait upon and attend the reversion, freehold, and inheritance of the said messuages or tenements, lands, hereditaments and premises hereby assigned, or intended so to be, with their appurtenances, and to protect the same from all mesne incumbrances, if any such there be, *And* the said [*Z. Z.*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [C. D.], his heirs and assigns, that he the said [Z. Z.] hath not at any time heretofore made, done, committed, executed, or knowingly or willingly permitted, or suffered, or been party or privy to, any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the said messuages or tenements, lands, hereditaments, and premises hereby assigned, or intended so to be, or any of them, or any part thereof, or the said hereinbefore-mentioned term of years created therein, as aforesaid, are, is, can, shall, or may be in any wise impeached, charged, affected, or incumbered. IN WITNESS, &c.

Covenant by assigning trustee against incumbrances.

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§ If the term is assigned to merge, the habendum and all the remaining portion of the form should be omitted, and insert as follows:

"To the end and intent that the said term of years, created by the said hereinbefore recited indenture of the day of as aforesaid, may henceforth be merged and extinguished in the reversion, freehold, and inheritance of the hereditaments and premises therein comprised, under the release hereinbefore contained." [*Covenant against incumbrances, as above.*]

BY HUSBAND AND WIFE, OF PROPERTY OF THE WIFE.

RELEASE *by* HUSBAND *and* WIFE *of Freeholds, belonging to the* WIFE.

THIS INDENTURE, made the day of , Parties. BETWEEN [*vendor*] of, &c. and his wife, of the one part; and [*purchaser*] of, &c. of the other part.(*a*) Recital of contract for purchase. WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] and his wife, for the absolute purchase of the messuages or tenements, lands, hereditaments and premises, hereinafter described and intended to be hereby granted and released, or otherwise assured, and the inheritance thereof in fee simple in possession, free from incumbrances, at or for the price or sum of pounds. Testatum, whereby, in consideration of purchase-money, NOW THIS INDENTURE WITNESSETH that in pursuance and performance of the said agreement, and in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*], to the said [*vendor*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt of which said sum of pounds, he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators and assigns); HE (*b*) the said [*vendor*] and his wife *Have*, and each of them *Hath* granted, bargained, sold, aliened, released, and confirmed; *And* by these presents *Do*, and each of them *Doth* grant, bargain, sell, alien, release, and confirm, unto the said [*purchaser*], (in his actual, &c. *reference to lease for a year*, &c.) and his heirs, Parcels. ALL that, &c. [*parcels*], *Together* with, &c. [*general*

vendor and wife convey to purchaser.

Recitals.

(*a*) Recite the history of the title, according to the circumstances.

Conveyance by married woman.

(*b*) A married woman of course cannot convey her real estate without a fine or recovery. It is usual, however, to make her join in the operative part, as thereby the necessity of proving the marriage is dispensed with.

words], *And* the reversion, &c. *And* all the estate, &c., of [*vendor*], To HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular the premises, hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*] and his heirs, to the uses hereinafter mentioned, concerning the same. *And* for the considerations hereinbefore expressed, and for the more effectually conveying and assuring the same messuages or tenements, lands, hereditaments and premises, to the uses and in the manner hereinafter mentioned; HE, the said [*vendor*], with the privity and approbation of the said his wife, (testified, &c.) doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that he the said [*vendor*], and his wife, or his and her heirs, shall or will, at the costs and charges of the said [*vendor*], his heirs, executors and administrators, in or as of term last, or in or as of term next, or some other subsequent term, when thereunto requested by the said [*purchaser*], his heirs or assigns, acknowledge and levy, in due form of law, before his majesty's justices of the said court of Common Pleas at Westminster (*a*), unto the said [*purchaser*] and his heirs, one or more fine or fines *sur conuzance de droit come ceo*, &c. whereupon proclamations shall be had and made, according to the form of the statute in that case made and provided, and the usual course of fines with proclamations, for the assurances of lands and hereditaments in like cases used and accustomed of the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, with their appurtenances, by such names and descriptions as shall be sufficient to comprise and ascertain the same. AND IT IS HEREBY AGREED AND DECLARED, between and by the parties to these presents, *That* the grant, release, and confirmation hereinbefore contained, and hereby made as aforesaid; and the said fine or fines so

BY HUSBAND AND WIFE, OF PROPERTY OF THE WIFE.

Habendum to the purchaser, to the uses hereinafter mentioned.

Covenant to levy a fine by husband.

Declaration that the grant and fine shall enure to the use of the purchaser.

(*a*) For covenant to levy fines in other courts, see 1 Byth. 250.

BY HUSBAND AND WIFE, OF PROPERTY OF THE WIFE.

to be acknowledged and levied as aforesaid,(c) *And* all and every other fine and fines, conveyances and assurances of the same messuages or tenements, lands, hereditaments and premises, or any part thereof, shall operate and enure, and shall be adjudged, deemed, construed and taken to operate and enure, to the uses hereinafter mentioned concerning the same (that is to say); [*To uses to bar dower*, see *ante*, p. 276.] *And* the said [*vendor*], doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said [*purchaser*], his heirs and assigns, in the manner following (that is to say); that for and notwithstanding any act, &c. (see *ante*, p. 258), by him the said [*vendor*] and his wife, or either of them made, &c., they the said [*vendor*] and his wife are at the time of, &c., (*seised in fee*, *ante*, p. 259). *And* that for and notwithstanding any such act, &c. (*as ante*, p. 259), they the said [*vendor*] and his wife, or one of them, now have in themselves, himself, or herself, good right, &c. as *ante*, p. 259, (*good right to convey*). *And* that, &c. (*purchaser may quietly enjoy, as ante*, p. 260, *without any claim, &c.*), from or by the said [*vendor*] and his wife, or either of them, their, or either of their heirs, or any person or persons lawfully or equitably claiming, or to claim by, from, through, or under, or in

Covenant for title by husband, as to the acts of himself and his wife,

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Husband covenanting to levy a fine.

(c) No point at one time seemed more settled than that if a husband covenanted for a valuable consideration, that his wife should levy a fine, he would be decreed in equity to procure her consent. *Berry* v. *Wade*, Finch, 180. *Barrington* v. *Horne*, 5 Vin. Ab. 547. pl. 45. 2 Eq. Ca. Ab. 17. pl. 7. *Hall* v. *Hardy*, 3 P. Wms. 187. *Sedgwick* v. *Hargrave*, 2 Ves. sen. 57. *Withers* v. *Pinchard*, cit. 7 Ves. 475; and *Morris* v. *Stephenson*, 7 Ves. 474. *contra*, *Ortread* v. *Round*, 4 Vin. Ab. 203, pl. 4. But in the case of *Emery* v. *Wase*, 5 Ves. 846, & S. C. on appeal, 8 Ves, 505, Lord Eldon went fully into the question, and expressed a strong opinion against granting a performance of the covenant. And this opinion has been acted upon in subsequent cases. See *Howel* v. *George*, 1 Madd. 6. *Marten* v. *Mitchell*, 2 J. & W. 425. And see also *Davis* v. *Jones*, 1 N. R. 267; & Gilb. Lex. Prœt. 245.

Practical caution.

In this state of the law, it is advisable to take the wife's acknowledgment before the conveyance; and in case of the husband's death before the execution thereof, she would then be bound.

trust for them, or either of them: *And that* free, &c. (as *ante*, p. 260; *free from incumbrances*), by the said [*vendor*] and his wife, or either of them, or any person or persons claiming, &c. by, from, through, under, or in trust for them, or either of them. *And moreover*, that the said [*vendor*] and his wife, and all, &c. (see *ante*, p. 261), in trust for them, or either of them, shall and will, &c. (*further assurance, as ante*, p. 262). IN WITNESS, &c.

BY HUSBAND AND WIFE, OF PROPERTY OF THE WIFF.

DEED OF COVENANT *to* SURRENDER COPYHOLDS *to Purchaser, with Variations for the circumstances of the Property being a* MARRIED WOMAN'S; *and where the Surrenderor is* TENANT IN TAIL.

COVENANT TO SURRENDER COPYHOLDS.

VARIATIONS, &c.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. (*a*) of the one part, and [*purchaser*] of, &c. of the other part. WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] (*b*) for the absolute purchase of the messuage

Parties.

Recital of agreement for purchase;

(*a*) If the lands are the wife's property, say,

Wife.

"[*vendor*] and his wife, of the one part,"

According to the custom of most manors, the wife's free-bench is barred by the husband's surrender. It was thought unnecessary therefore to introduce a form for barring it.

Free-bench.

(*b*) If the lands are the wife's property, say,

Wife.

"[*vendor*] and his wife."

Where the vendor is tenant in tail, and the mode of barring the entail is by surrender, which has been said to be the most natural way of barring an estate tail in copyholds, *Everall* v. *Smalley*, 2 Stra.

Tenant in tail.

COVENANT TO SURRENDER COPYHOLDS.

or tenement, lands, hereditaments and premises hereinafter described, and covenanted to be surrendered, with their appurtenances, for an estate of inheritance in fee simple in possession, according to the custom of the manor of , free from incumbrances, at or for the price or sum of pounds. And whereas (*d*) it hath been agreed, that the said [*vendor*] should covenant to surrender the said messuage or tenement, lands, hereditaments, and premises, to the said [*purchaser*], in manner hereinafter mentioned. Now this indenture witnesseth, that in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] (*e*), in hand well and truly paid, at or immediately before the sealing and delivering of these presents, (the receipt of which said sum of pounds he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the

and that vendor should covenant as hereinafter is mentioned.

Testatum, whereby in consideration of purchase-money,

1197. 1 Wils. 26. S. C. and which is certainly the cheapest; the form will be as above, except that the history of the title, according to the circumstances, should be recited, and the subsequent notes be attended to.

If the entail is to be barred by a recovery, the reader is referred to the title *Recovery Deeds*, to which head this form seems more properly to belong. As the custom of barring an estate tail by forfeiture and regrant exists but in few manors, it has not been thought necessary to give a form for that mode of alienation.

Tenant in tail.

(*d*) If the vendor is tenant in tail, say,

"And whereas, it hath been agreed that the estate tail of the said [*vendor*], and all other estates tail of and in the said messuage or tenement, lands, hereditaments and premises, hereinafter described, and intended to be hereby covenanted to be surrendered, and all remainders, limitations over, and reversions, expectant or depending thereupon, should be barred and destroyed, according to the custom of the said manor of , in the manner hereinafter expressed and declared of and concerning the same,"

Wife.

(*e*) If the lands are the wife's property, say,

"[*vendor*] and his wife,"

said [*purchaser*], his heirs, executors, administrators, and assigns); (*f*) *He*, the said [*vendor*] (*g*) doth hereby, for himself, his heirs, (*h*) executors, and administrators, COVENANT, promise, and agree, with and to the said [*purchaser*], his heirs and assigns, that he the said [*vendor*] or his heirs (*i*), shall and will, at the proper costs and charges of the said [*purchaser*] (*k*), his executors, administrators, and assigns, at or before the next general or other court, to be holden in and for the said manor of well and effectually surrender, or cause or procure to be well and effectually surrendered, into the hands of the lord or lady for the time being of the said manor, by the acceptance of the steward, or by the hands of two or more customary tenants of the said manor, according to the

COVENANT TO SURRENDER COPYHOLDS.

vendor covenants to surrender premises to purchaser in fee;

(*f*) If the vendor be tenant in tail, say, Estate tail.

"And for docking, barring, and destroying all the estate tail of the said [*vendor*], and all other estates tail, and all remainders, limitations, and reversions over, estates, charges, considerations, and contingencies, thereupon respectively expectant or depending, of and in the said messuage or tenement, hereditaments, and premises, intended to be hereby covenanted to be surrendered."

(*g*) If the lands be the wife's, insert, Wife.

"with the consent and privity of the said his wife, testified by her being a party to, and sealing and delivering these presents,"

(*h*) If the lands be the wife's, say, Wife.

"he the said [*vendor*], and his wife, or his or her heirs, shall," &c.

(*i*) This covenant binds the heir. *Keene* v. *Theeke*, 9 Mod. 106. Heir.

(*k*) The expenses of the covenant to surrender, as well as those of the surrender and admittance, and the payment of the fine, and all other documents which are analogous to the conveyance of a freehold estate, are to be borne by the purchaser; and the fine is payable by him, although the vendor agree to surrender and assure at his own expense, because the fine is not due till after admittance, when the assurance is complete. *Graham* v. *Sime*, 11 East, 632. Expenses of surrender.

COVENANT TO SURRENDER COPYHOLDS.

custom thereof; or otherwise well and effectually convey and assure, *To the use* and behoof of the said [*purchaser*], his heirs and assigns, *All that,* &c. *To the end* and intent that the said [*purchaser*], his heirs or assigns, may be admitted tenant to all and singular the said messuage or tenement, hereditaments and premises, on the court-rolls of the said manor, *To hold* to him, his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, subject only to the rents, duties, suits, and services therefore due and of right accustomed. AND (*l*) further, that until such surrender shall be made and perfected, and the said [*purchaser*], or his heirs, shall be admitted tenant to all and singular the said messuage or tenement, hereditaments, and premises, with the appurtenances; *That* he the said [*vendor*] and his heirs, shall and will stand and be seised or possessed of the said messuage or tenement, hereditaments, and premises, *In trust* for the sole use and benefit of the said [*purchaser*], his heirs and assigns for ever, and to be surrendered and disposed of from time to time, as he or they shall direct or appoint: *Nevertheless,* so that he the said [*vendor*], his heirs, executors, and administrators, shall and may be at liberty, during the continuance of this trust, to deduct, retain, and reimburse, to and for himself and themselves respectively, out of the rents and profits of the said messuage or tenement, hereditaments, and premises, hereby covenanted to be surrendered, all costs, charges, expenses, and outgoings, which he or they respectively shall or may bear, sustain, or pay for, and in respect of the same hereditaments and premises. *And* the said [*vendor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, in manner following; that is to say; that for and notwithstanding (*m*) any act,

and until such surrender, will stand seised of the premises for the benefit of purchaser.

Covenants by vendor for title.

(*l*) This clause does not seem to be necessary, and may safely be omitted. See other forms of covenants to surrender, *ante,* 69, and *post.*

Covenants.

(*m*) For a shorter and neater string of covenants for title, see *post.* The above however are often used in practice.

deed, matter, or thing whatsoever, made, done, or committed, by him (*n*) the said [*vendor*] to the contrary, *He* the said [*vendor*] now hath in himself good right, full power, and absolute authority, to surrender all and singular the said messuage or tenement, lands, hereditaments and premises, hereby covenanted to be surrendered, and every part and parcel of the same, with the appurtenances, to the use of the said [*purchaser*], his heirs and assigns for ever; to the end and intent that he may be tenant thereof, in manner aforesaid, at the will of the lord, according to the custom of the said manor, and the true intent and meaning of these presents. *And also*, that for and notwithstanding any such act, matter, or thing, as aforesaid, it shall and may be lawful to and for the said [*purchaser*], his heirs and assigns, from time to time, and at all times hereafter, (but so as not to create a forfeiture of the said hereditaments, by his entry thereon as owner before admission thereto,) peaceably and quietly to enter into and upon, and have, hold, use, occupy, possess, and enjoy the said messuage or tenement, lands, hereditaments and premises, hereby covenanted to be surrendered, with the appurtenances, and to receive and take the rents, issues, and profits thereof, and every part and parcel of the same, to and for his own use and benefit, without any let, suit, trouble, eviction, ejection, expulsion, interruption, or denial whatsoever, of, from, or by any other person or persons lawfully claiming or to claim any estate, right, title, trust, charge, or interest in the premises, by, from, through, under, or in trust, for him (*o*), them, or any of them: *And that* free and clear, freely, and clearly, and absolutely acquitted, exonerated, released, and for ever discharged

COVENANT TO SURRENDER COPYHOLDS.

good right to surrender;

and for quiet enjoyment of purchaser,

free from incumbrances;

(*n*) If the lands be the wife's, say, "him, or his wife, to the contrary, he the said [*vendor*], and his wife now have, or one of them hath, in himself or herself, good right," &c.

Wife.

and for further assurance.

(*o*) If the lands be the wife's, say, "him, her, them," &c.

Wife.

COVENANT TO SURRENDER COPYHOLDS.

or otherwise, by him (*p*) the said [*vendor*], his heirs, executors, or administrators, at his and their own costs and charges, in all things well and sufficiently protected, defended, saved harmless and indemnified, of, from, and against all and all manner of former and other grants, surrenders, forfeitures, cause and causes of forfeiture, estates, titles, troubles, liens, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or from time to time or at any time hereafter shall or may be had, made, done, occasioned, permitted, or suffered by him (*q*) the said [*vendor*], or his heirs, or any person or persons claiming, or to claim any estate, right, title, trust, charge, or interest in the premises, by, from, through, under, or in trust for him, them, or any of them, or by his, their, or any or either of their acts, means, consent, default, privity, or procurement. (The customary rents, fines, heriots, duties, suits and services to be henceforth paid, done and performed for or in respect of the said copyhold messuage or tenement, farm, lands, and hereditaments, only excepted); *And moreover* that he (*r*) the said [*vendor*] and his heirs, and all and every other person and persons whatsoever, claiming or to claim, any estate, right, title, trust, charge, or interest in the premises, by, from, through, under, or in trust for him, them, or any of them, shall and will, from time to time, and at all times for ever hereafter, upon every reasonable

and for further assurance.

Wife.

(*p*) If the lands be the wife's, say,

"him the said [*vendor*] and his wife, his and her heirs, executors, and administrators, at his, her, and their," &c.

Wife.

(*q*) If the lands be the wife's, say,

"him the said [*vendor*] and his wife, or either of them, or his or her heirs, or any person, &c. for him, her, them," &c.

Wife.

(*r*) If the lands be the wife's, say,

"he the said [*vendor*] and his wife, and his and heirs," &c.

COVENANT TO SURRENDER COPYHOLDS.

request, and at the proper costs and charges in all things of the said [*purchaser*], his heirs and assigns, make, do acknowledge, levy, suffer, execute, and perfect, or cause or procure to be made, done, acknowledged, levied, suffered, executed and perfected, all and every such further and other lawful and reasonable acts, deeds, devices, conveyances, surrenders, releases, and assurances in the law whatsoever, for the further, better, and more perfectly, absolutely, or satisfactorily conveying, surrendering, confirming or otherwise assuring the said messuage or tenement, hereditaments, and premises hereby covenanted to be surrendered, with the appurtenances, unto, or to the use of the said [*purchaser*], his heirs or assigns, or as he or they shall direct or appoint, at the will of the lord, according to the custom of the said manor, and the true intent and meaning of these presents, *As* by the said [*purchaser*], his heirs and assigns, or his or their counsel in the law, shall be reasonably devised or advised and required; *So as* no such further assurances, or any of them, shall contain or imply any other or more general covenant or warranty on the part of the person or persons who shall be requested to make and execute the same, than for the acts, deeds, or defaults of himself, herself, and themselves respectively, and his, her, and their heirs, executors, and administrators; and so as the person or persons who shall be requested to do such acts, or make such further assurances, shall not be compelled or compellable, for the purpose of making or doing thereof, to go, or travel, from his, her, or their usual place or places of abode, save and except for the purpose of completing any of the aforesaid assurances which cannot be perfected there. IN WITNESS, &c. (*s*)

(*s*) The stamps on surrenders, &c. besides those mentioned, *ante*, p. 265, are as follow: Stamps on surrenders, &c. of copyholds.

Surrender or admittance out of court, or the memorandum thereof, or the copy of Court Roll of any surrender or admittance in court, where the yearly value of the estate exceeds 20*s*. - 1*l*. 0*s*. 0*d*.

And where it does not exceed 20*s*. - - 0*l*. 5*s*. 0*d*.

Where both a surrender and admittance, or more than one surrender

or admittance, or memorandum thereof, shall be contained in the same piece of parchment, whether upon a sale, mortgage, or other occasion, the proper duty shall be paid in respect of each surrender and each admittance. And where the surrender, or admittance, or memorandum, shall contain 2160 words or upwards, for every 1080 above the first 1080, a further progressive duty of - - 1*l.* 0*s.* 0*d.*

The copy of Court Roll, and the several surrenders, admittances, and other acts necessary for perfecting a common recovery of any entailed copyhold or customary estates, where the yearly value exceeds 20*s.*, five times - - - - 1*l.* 0*s.* 0*d.*

And where it does not exceed 20*s.* five times - 0*l.* 5*s.* 0*d.*

And if the copy of Court Roll of any other admittance or surrender be contained in the same piece of parchment, then it shall be charged with the additional duty which would have been payable if such other surrender or admittance had been on a separate piece of parchment.

Exemptions. Exemptions from these and all other stamp duties:

Original surrenders out of court, and copies of Court Roll of surrenders in court, to the use of a will, or to a trustee for the uses of a will, and the Court Rolls or books of any manor wherein the proceedings relating thereto shall be entered or minuted.

Consideration. It may here be mentioned that the principles laid down in *Lampon* v. *Corke*, *ante* 245-247, have been acted upon and confirmed in the case of *Bottrell* v. *Summers*, 2 Yo. and Jerv. 407, reported since the first sheets were printed.

DEED TO ACCOMPANY A SURRENDER.

DEED *to accompany a* SURRENDER (*a*) *already made, containing* COVENANTS FOR TITLE *by the* VENDOR.

THIS INDENTURE, made the day of , in the year of our Lord , BETWEEN [*vendor*] of, &c. Parties. of the one part; and [*purchaser*] of, &c. of the other part. WHEREAS the said [*purchaser*] some time in the month of contracted and agreed with the said [*vendor*] Contract for purchase; for the absolute purchase of ALL that copyhold or customary messuage or tenement, lands and hereditaments, situate &c. [*describe the parcels*], and the inheritance thereof in fee simple, free from all incumbrances, at or for the price or sum of . AND WHEREAS in pursuance of the said agreement, and in consideration of the sum of , by the said [*vendor*] to the said [*purchaser*] paid on the day of the date of these presents, (the receipt whereof he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators, and assigns, and every of them,) he the said [*vendor*], at a court holden for the said vendor has surrendered.

and that, in consideration of purchase-money, the receipt of which is acknowledged,

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(*a*) It is much safer for the purchaser, before he pays his purchase-money, to have the surrender actually made to him; as, if the covenantor should die before he surrenders, considerable difficulty may be found in procuring a surrender, and until a surrender be actually made, it is hardly advisable to pay the purchase money, although it is certainly frequently done. An injunction, however, to restrain the vendor of copyhold premises, after delivery of possession and receipt of part of the purchase money, from surrendering them to persons other than the purchasers, will be granted. *Spiller* v. *Spiller*, 3 Swanst. 556. Utility of this precedent.

DEED TO ACCOMPANY A SURRENDER.

manor, on or about the day of , surrendered the said copyhold or customary messuage or tenement, hereditaments and premises, with the appurtenances, into the hands of the lord of the said manor, to the use of the said [*purchaser*], his heirs and assigns, according to the custom of the said manor. AND WHEREAS the said [*purchaser*] was then and there admitted tenant of the said copyhold or customary messuage or tenement, hereditaments and premises, on the court rolls of the said manor, To hold to him, his heirs and assigns, at the will of the lord, according to the custom of the said manor, subject only to the rents, fines, suits and services therefore due, and of right accustomed. AND WHEREAS, on the treaty for the said purchase, it was agreed that the said [*vendor*] should enter into the covenants for the title of the said copyhold or customary messuage or tenement, hereditaments, and premises, so surrendered as aforesaid, hereinafter contained. NOW THIS INDENTURE WITNESSETH (*a*), that in pursuance of the said agreement, and in consideration of the premises, HE the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, in manner following; that is to say; *That* for and notwithstanding any act, deed, matter or thing whatsoever, by the said [*vendor*] made, done, omitted or committed, or knowingly or willingly executed to the contrary, he the said [*vendor*], at the time of surrendering the said copyhold, or customary messuage or tenement, hereditaments and premises, in the manner hereinbefore mentioned, had in himself good right, full power, and lawful and absolute authority, to surrender the same, and every part and parcel thereof, with the appurtenances, *To the use* of the said [*purchaser*], his heirs snd assigns for ever, at the will of the lord, according to the custom of the said manor, and the true intent and meaning of these presents, and of the said surrender; *And also*

and admittance of the purchaser;

and that it was agreed that vendor should enter into covenants.

Testatum, whereby vendor covenants for title.

and for quiet enjoyment of purchaser;

(*a*) In some of the forms in print, a declaration that the surrender shall enure to the use of the purchaser is here introduced; but this is unnecessary, as it is always mentioned in the surrender itself.

that it shall and may be lawful to and for the said [*purchaser*], his heirs and assigns, immediately upon and after the execution of these presents, and from time to time, and at all times hereafter, to enter into and upon, have, hold, use, occupy, possess and enjoy the said copyhold or customary messuage or tenement, hereditaments, and premises so surrendered, as aforesaid, or intended so to be, and every part and parcel of the same, with the appurtenances; *And* to have, receive, and take the rents and profits thereof, and of every part thereof, without any lawful let, suit, trouble, eviction, interruption, hindrance, or denial whatsoever, of, from, or by him the said [*vendor*] or his heirs, or any other person or persons whomsoever, lawfully or equitably claiming, or to claim, any estate, right, title, trust, or interest in the same hereditaments and premises, by, from, through, under, or in trust for him, them, or any of them, *And that* free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and discharged or otherwise, by him the said [*vendor*], his heirs, executors, or administrators, at his and their own costs and charges, in all things well and sufficiently protected, defended, saved and kept harmless, and kept indemnified of, from, and against all and all manner of former and other gifts, grants, surrenders, feoffments, mortgages, leases, forfeitures, freebench, uses, trusts, wills, entails, estates, titles, troubles, liens, charges, and incumbrances whatsoever, at any time or times heretofore, and to be at any time and from time to time hereafter had, made, done, committed, occasioned, permitted or suffered, by the said [*vendor*] or his heirs, or any person or persons rightfully claiming, or to claim, any estate, right, title, trust, or interest in the premises, by, from, through, under, or in trust for him, them, or any of them, or by his, their, or any of their acts, deeds, means, default, or procurement, (save and except the rents, duties, suits and services to be paid, done, and performed to the lord of the said manor of , for and in respect of said copyhold or customary hereditaments and premises, so surrendered as aforesaid, and of right accustomed to be paid, done and performed;) *And moreover*, that he the said [*vendor*] and his heirs, and all persons whomsoever lawfully or equitably, and right-

DEED TO ACCOMPANY A SURRENDER.

free from incumbrances;

and for further assurance;

DEED TO ACCOMPANY A SURRENDER.

fully claiming, or to claim, any estate, right, title, or interest in the said hereditaments and premises, by, from, through, under, or in trust for him and them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges in all things of the said [*purchaser*], his heirs and assigns, make, do, acknowledge, levy, suffer, execute, and perfect, or cause or procure to be made, done, acknowledged, levied, suffered, executed, and perfected, all such further and other lawful and reasonable acts, deeds, conveyances, surrenders, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely, or satisfactorily surrendering, releasing, confirming or otherwise assuring the said copyhold or customary messuage or tenement, hereditaments, and premises so surrendered, as aforesaid, or intended so to be, and every part and parcel of the same, with the appurtenances, unto or to the use of the said [*purchaser*], his heirs and assigns for ever; as he or they shall direct or appoint, nevertheless at the will of the lord, and according to the custom of the said manor, and the true intent and meaning of these presents and the said surrender, as by the said [*purchaser*], his heirs and assigns, or his or their counsel in the law, shall be reasonably devised or advised and required, so as no such further assurances, or any of them, shall contain or imply any other covenant or warranty on the part of the person or persons who shall be requested to make and execute the same, than for the acts, deeds, and defaults of himself, herself, and themselves, respectively, and his, her, and their heirs, executors, and administrators; *And* so as the person or persons who shall be requested to make such further assurances shall not be compelled, or compellable, for the purpose of making or doing the same, to go, or travel, from his, her, or their usual place of abode, or respective places of abode, save and except to attend any court of the said manor of , for the purpose of perfecting any surrender, or other assurance, which it may be necessary there to perfect. IN WITNESS, &c. (*a*)

Stamp.

(*a*) It is to be remembered, that the *ad valorem* duty is paid on the surrender itself. 48 Geo. III. c. 149.

OF FREEHOLDS AND COPYHOLDS

CONVEYANCE *of* FREEHOLDS *by Lease and Release, and* COVENANT *to surrender* COPYHOLDS; *the history of the Title to both Estates being shortly recited.*

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the first part; [*purchaser*] of, &c. of the second part; and [*trustee*] of the third part. Parties.

WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , and made or expressed to be made between [A. B.] (therein described) of the one part, and the said [*vendor*] of the other part; the messuage or tenement, lands, hereditaments and premises, hereinafter firstly (*a*) described, and intended to be hereby granted and released, with the appurtenances, were, for the considerations in the said indenture of release mentioned, conveyed by the said [A. B.] to and to the use of the said [*vendor*], his heirs and assigns for ever. Recital of lease and release, whereby freeholds were conveyed to vendor in fee.

AND WHEREAS, by an indenture, bearing date on or about the day of , and made or expressed to be made between [Y. Y.] of the one part, and the said [*vendor*] of the other part; the said [Y. Y.] did for the considerations therein mentioned, covenant with the said [*vendor*], his heirs and assigns, that he the said [Y. Y.], or his heirs would, with all convenient speed, after the execution of the indenture now in recital, surrender and yield up into the hands of the lord or lady, for the time being, of the manor of in the county of , all and singular the messuage or tenement, lands, hereditaments and premises, hereinafter secondly described, and intended to be covenanted to be surrendered, with the appurtenances, Covenant to surrender copyholds to vendor in fee.

(*a*) Or the parcels may be described by way of schedule; and if this mode should be preferred, see the proper form, *ante*, 20. Schedule.

OF FREEHOLDS AND COPYHOLDS.

to the use of the said [*vendor*], his heirs and assigns for ever. *And* that in the mean time, and until such surrender should be made as aforesaid, he, the said [Y. Y.] and his heirs, should stand and be seised or possessed of the same messuage or tenement, lands, hereditaments and premises, *In trust* for the said [*vendor*], his heirs and assigns. AND WHEREAS, at a court baron or customary court, holden in and for the said manor, the said [Y. Y.] did, in pursuance of the said hereinbefore recited indenture of the day of , surrender into the hands of the lord of the said manor, according to the custom of the said manor, the said messuage or tenement, lands, hereditaments and premises, hereinafter secondly described, and intended to be hereby covenanted to be surrendered, with the appurtenances, to the use of the said [*vendor*], his heirs and assigns for ever, according to the custom of the said manor of . AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*], for the absolute purchase of the said freehold and copyhold messuages or tenements, lands, hereditaments and premises, hereinafter particularly described, and intended to be hereby respectively released, and covenanted to be surrendered, with their respective appurtenances, and the inheritance thereof respectively, free from incumbrances, at or for the price or sum of pounds. *And* it hath been agreed, that the sum of pounds, (part (*a*) of the said sum of pounds), should be considered the purchase money for the said hereditaments and premises hereinafter firstly described, with the appurtenances; *And* that the sum of pounds (the residue of the said sum of pounds) should be considered the purchase money for the said hereditaments and premises hereinafter secondly described, with the appurtenances. AND WHEREAS, the said [*purchaser*] is desirous

And surrender accordingly.

Contract for purchase.

Agreement as to the apportionment of the purchase-money.

Desire of pur-

(*a*) Where lands or other property of different tenures or holdings, or held under different titles, contracted to be sold at one entire price, are conveyed in separate parcels by different instruments, a distinct consideration for each part must be set forth in the principal or only instrument of conveyance; but the consideration money may of course be apportioned as the parties may choose. See 55 Geo. III. c. 184. Sched. Part I. *tit.* conveyance, *ante*, 266.

Apportionment of purchase-money.

that the hereditaments and premises hereinafter described, with their respective appurtenances, should be conveyed or covenanted to be surrendered, to the uses, and in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*], to the said [*vendor*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of which sum of pounds, he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*vendor*], his heirs, executors, administrators and assigns, HE, the said [*vendor*] *Hath* granted, bargained, sold, aliened, released and confirmed, and by these presents *Doth* grant, bargain, sell, alien, release and confirm unto the said [*purchaser*], (in his actual, &c. *reference to a lease for a year*) and his heirs, *All, &c.* (*the freehold premises*) [*parcels and general words*], *And* the reversion, &c. *And* all the estate, &c., TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereinbefore described and hereby granted and released, or intended so to be, and every part and parcel thereof, with their, and every of their appurtenances, unto the said [*purchaser*] and his heirs, *To* such uses, &c. (*uses to bar dower*, ante, 276). AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the sum of pounds(*a*), (*payment of consideration, and receipt, as before*) *He*, the said [*vendor*], *Doth* hereby for himself, his heirs, executors and administrators, COVENANT, promise, and agree with and to the

OF FREEHOLDS AND COPYHOLDS.

chaser to have the premises conveyed.

First witnessing part, whereby the freehold premises are conveyed to purchaser.

Habendum, to uses to bar dower.

Further witnessing part, and covenant to surrender the copyholds to purchaser.

(*a*) Here insert the payment of the sum agreed to be paid for the copyholds; or there may be one payment of the whole sum and a receipt for the same, which is the more usual way; in which case say, Consideration.

"in consideration of the said sum of pounds, so paid as hereinbefore is mentioned,"

OF FREEHOLDS AND COPYHOLDS.

said [*purchaser*], his heirs and assigns, *That* he, the said [*vendor*], or his heirs, and all and every other proper and necessary parties shall and will, at or before the next court to be holden in and for the said manor of in the county of , and at the expense of the said [*purchaser*], well and effectually surrender, or cause and procure to be surrendered, into the hands of the lord or lords, lady or ladies of the said manor, *To the use* of the said [*purchaser*], his heirs and assigns, ALL THAT, &c. (*the copyhold premises*) and the appurtenances thereto belonging, *And*(*a*) the reversion, &c. *And* all the estate, &c., *To* hold the same unto the said [*purchaser*], his heirs and assigns for ever, at the will of the lord or lady of the said manor, according to the custom of said manor of by the rents and services thereupon due and of right accustomed; *And* the said [*vendor*] doth hereby for himself, his heirs, executors and administrators, COVENANT, promise and agree with and to the said [*purchaser*], his heirs and assigns, in manner following, (that is to say) that for and notwithstanding any act, deed, matter or thing whatsoever, by him, the said [*vendor*], made, done, omitted, committed, executed, or knowingly or willingly permitted or suffered to the contrary; HE, the said [*vendor*], at the time of the sealing and delivery of these presents, hath in himself, good right, full power, and lawful and absolute authority, to convey and surrender the said messuages or tenements, lands, hereditaments and premises, hereby respectively granted and released, and covenanted to be surrendered, or intended so to be, with their respective appurtenances, in manner aforesaid, according to the true intent and meaning of these presents; *And that* it shall and may be lawful to and for the said [*purchaser*], his heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to have, hold, occupy, possess, and enjoy the said messuages or tenements, lands, hereditaments, and premises, hereby respec-

Covenants for title.

good right to convey the freeholds and surrender copyholds;

for quiet enjoyment of purchaser;

General words.

(*a*) General words should be always omitted in covenants to surrender copyholds; and some conveyancers of eminence omit the clauses, "And the reversion," &c. and "All the estate, &c." and they are in fact quite unnecessary

OF FREEHOLDS AND COPYHOLDS.

tively granted and released, and covenanted to be surrendered, or intended so to be, and to have, receive, and take the rents, issues and profits thereof, and of every part thereof respectively, with their respective appurtenances, to and for his and their own use, without the lawful let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of or by the said [*vendor*] or his heirs, or of or by any other person or persons lawfully or equitably and rightfully claiming or to claim, by, from, or under, or in trust for him, them, or any of them; *And that* free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said [*vendor*], his heirs, executors and administrators, well and sufficiently saved, defended and kept harmless, and indemnified, of, from, and against all, and all manner of former and other gifts, grants, surrenders, bargains, sales, jointures, dowers, freebench, and all rights and titles of dower and freebench, uses, trusts, entails, wills, annuities, legacies, rent-charges, rents-seck, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, (*a*) executions, extents, rents, arrears of rent, annuities, duties, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all other estates, titles, troubles, charges, debts and incumbrances whatsoever, either already had and made, executed, occasioned, or hereafter to be had, made, executed, occasioned, and suffered by the said [*vendor*] or his heirs, or by any other person or persons, lawfully or equitably claiming or to claim by, from and under, or in trust for him, them, or any of them, (save and except the fines and heriots, rents and services, which shall henceforth become due or payable for, or in respect of the said copyhold, or customary hereditaments and premises, hereby covenanted to be surrendered). AND MOREOVER, that he, the said [*vendor*] and his heirs, and all other persons having or claiming, or who

free from incumbrances;

and for further assurance.

(*a*) As copyholds are not subject to judgments, the word can apply only to the freehold part of the premises conveyed. See 3 Prest. Conv. 351.

Judgments.

OF FREEHOLDS AND COPYHOLDS.

shall or may hereafter have or claim any estate, right, title, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, or to, and out of the said messuages or tenements, lands, hereditaments and premises hereby granted and released, and covenanted to be surrendered, or intended so to be, or any of them, or any part thereof respectively, by, or under, or in trust for him, or them, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, and by and at the costs and charges in all things of the said [*purchaser*], his heirs and assigns, make, do, acknowledge, levy, suffer and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, conveyances, surrenders, and assurances in the law whatsoever, for the further, better, more perfectly, lawfully and absolutely, or satisfactorily granting, conveying, surrendering, and assuring the said messuages or tenements, lands, hereditaments and premises hereby granted and released, and covenanted to be surrendered, or intended so to be, to the uses and in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*purchaser*], his heirs and assigns, or his or their counsel in law, shall be reasonably devised, advised and required; and so as no such further assurance or assurances shall contain or imply any further or other covenants or other warranty than against the person or persons who shall be requested to make or execute the same, and his, her, and their heirs, executors and administrators; *And* so as the person or persons, who shall be requested to make such further assurance or assurances be not compelled nor compellable, for the making thereof, to go or travel from his, her, or their usual place or respective places of abode. IN WITNESS, &c. (*a*).

Ad valorem duty.

(*a*) The *ad valorem* duty upon this deed will be payable for the value of the freeholds only, and that for the copyholds will be paid on the surrender.

RELEASE *of* FREEHOLDS, COVENANT *to surrender* COPYHOLDS, *and* ASSIGNMENT *of* LEASEHOLDS (*a*), *and* COVENANTS FOR TITLE *of all the Premises, subject to certain* QUIT RENTS, &c.

OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

THIS INDENTURE, made the day of ; BETWEEN [*vendor*] of, &c. of the first part; [*purchaser*] of, &c. of the second part; and [*trustee to bar dower*] of, &c. of the third part. WHEREAS [*testator*] late of, &c. being seised in fee simple of the freehold messuages or tenements, lands, hereditaments, and premises, hereinafter particularly described, and intended to be hereby granted and released, with their appurtenances, and seised to him and his heirs, according to the custom of the manor of in the county of of the copyhold or customary messuage or tenement, lands, and hereditaments, hereinafter also particularly described, and hereby covenanted to be surrendered (which copyhold or customary premises, he had surrendered to the use of his will), did, in such manner as is by law required for rendering valid devises of freehold estates, sign and publish his last will and testament in writing, bearing date on or about the day of whereby he gave and devised (amongst other things) the said freehold, and

Parties.

That testator being seised of freehold and copyholds,

made his will.

(*a*) It is generally untechnical and improper to convey freeholds or covenant to surrender copyholds, and assign leaseholds, by the same deed, as on the death of the purchaser, the property will devolve to different persons, and there may be a difficulty about the possession of the deed; but it often happens that freeholds or copyholds and leaseholds, are so intermixed, that it is difficult, if not impossible, to convey them separately: in such cases the above precedent will be found serviceable.

Freeholds, copyholds, and leaseholds.

OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

copyhold or customary messuages or tenements, lands, hereditaments, and premises, unto his nephew, the said [*vendor*]; AND WHEREAS the said [*testator*] departed this life, without having altered or revoked his said will, and leaving the said [*vendor*], his said nephew and heir at law, him surviving; AND WHEREAS the said [*vendor*], upon the decease of the said [*testator*], entered upon the said freehold, and copyhold or customary messuages or tenements, lands, hereditaments, and premises, hereinafter particularly described, and intended to be hereby granted and released, and covenanted to be surrendered, with their respective appurtenances, and afterwards, to wit, on the day of was admitted as tenant to the same copyhold or customary messuage or tenement, lands, hereditaments, and premises, *To hold* the same to him and his heirs for ever, according to the custom of the said manor of ; AND WHEREAS, by an indenture bearing date on or about the day of and made, or expressed to be made, between [*lessor*] of, &c. of the the one part; and the said [*vendor*] of the other part; for the considerations therein mentioned, the said [*lessor*] did demise and lease unto the said [*vendor*] the piece or parcel of land and premises, hereinafter described, and intended to be hereby assigned, with the appurtenances, *To hold* the same unto the said [*vendor*], his executors, administrators, and assigns, from the day of the date of the said indenture now in recital, for and during and unto the full end and term of years from thence next ensuing, and fully to be complete and ended; at and under the yearly rent of , payable quarterly, at the times therein mentioned, and under and subject to the covenants and agreements therein mentioned on the part of the said [*vendor*], his executors, administrators, and assigns, to be kept, observed, and performed: AND WHEREAS, the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said freehold messuages or tenements, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances; *And also* for the absolute purchase of the said copyhold or customary messuage or tenements, lands and hereditaments, hereinafter

Entry of vendor upon the premises;

and that he was admitted to the copyholds.

Indenture of lease, whereby leaseholds were demised to vendor.

Contract for purchase of the freeholds, copyholds, and leaseholds.

described, and covenanted to be surrendered, with their appurtenances, and also for the purchase of the said leasehold premises, for the residue and remainder of the said term of years now to come and unexpired; free from incumbrances (except as hereinafter is excepted) at or for the price of pounds. (*a*) NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] in hand well and truly paid, at or before the sealing and delivery of these presents (the receipt of which said sum of pounds he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, and administrators), HE the said [*vendor*] *hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*] (in his actual possession, &c.) (*reference to lease for a year*), and to his heirs, *All*, &c. (*parcels and general words*), *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*purchaser*] and his heirs and assigns, *To* the only proper use of him, the said [*purchaser*], his heirs and assigns for ever: AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the said sum of pounds, so paid by the said [*purchaser*] to the said [*vendor*], as hereinbefore is mentioned, *He* the said [*vendor*], for himself, his heirs, executors, and administrators, *Doth* hereby COVENANT, promise, and agree, with and to the said [*purchaser*], his heirs and assigns, that he the said [*vendor*], or his heirs, shall and will, at the costs and charges of the said [*purchaser*], his heirs or assigns, at or before the next court to be holden in and for the said manor of surrender, or cause or procure to be surrendered into the

OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

First witnessing part, whereby, in consideration of purchase-money, vendor conveys the freeholds to purchaser.

Habendum to the purchaser in fee.

Second witnessing part, whereby vendor covenants to surrender the copyholds to purchaser in fee.

(*a*) See recital as to division of purchase-money, *ante*, 310.

OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

hands of the lord or lady of the said manor, by the rod, according to the custom of the said manor, ALL THAT customary or copyhold messuage, &c. (*Parcels.*) *And* the reversion, &c. *And* all the estate, &c. *To the use* of the said [*purchaser*], his heirs and assigns, to be held of the lord or lady of the said manor, according to the custom of the said manor, by the rents and services therefore due, and of right accustomed, and shall and will cause and procure the said [*purchaser*], his heirs or assigns, to be admitted as tenant or tenants thereto, accordingly. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said sum of pounds, so paid by the said [*purchaser*] to the said [*vendor*], as hereinbefore is mentioned, *He*, the said [*vendor*], *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said piece or parcel of land, and premises, hereby assigned or intended so to be, and every part thereof, with the appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, from henceforth, for and during all the residue and remainder of the said term of years, now to come and unexpired, subject nevertheless to the payment of the said rent of pounds, and to the observance and performance of the covenants and agreements in and by the said recited indenture of lease reserved and contained, which henceforth, on the tenants or lessees' part, ought to be paid, kept, observed, and performed: *And* the said [*vendor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*purchaser*], his heirs, executors, administrators, and assigns, in manner following, (that is to say,) that, for and notwithstanding any act, deed, matter, or thing whatsoever, by him, the said [*vendor*], or by the said [*testator*], made, done, committed, executed, or wittingly or willingly suffered, to the contrary: *He*, the said [*vendor*] is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled unto, all and every the said freehold mes-

Parcels.

Third witnessing part, whereby vendor assigns leaseholds to purchaser.

Parcels.

Habendum to the purchaser for the residue of the term, subject to the rent and covenants.

Covenant by the vendor for title;

that he is seised in fee of the freeholds;

OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

suages or tenements, hereditaments and premises hereby granted and released, or intended so to be, and every part thereof, and their and every of their appurtenances, for a good, sure, perfect, lawful, absolute, and indefeasible estate of inheritance in fee simple, without any manner of condition, use, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same; *And that* for and notwithstanding any such act, deed, matter, or thing whatsoever, as aforesaid, (except as hereinafter is excepted,) he the said [*vendor*] is now seised of and in, or well and sufficiently entitled unto the said copyhold or customary messuage or tenement, hereditaments and premises hereby covenanted to be surrendered as aforesaid, and every part thereof, with the appurtenances, for a good, sure, and indefeasible estate of inheritance to him and his heirs, according to the custom of the said manor of , without any manner of condition, use, trust, equity of redemption, power of revocation, or other restraint, cause, matter or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same. *And that* for and notwithstanding any such act, deed, matter or thing as aforesaid, the said hereinbefore recited indenture of lease is, at the time of the sealing and delivering of these presents, a good and effectual lease and demise in the law, of and for the said premises therein comprised; and that the said term is not forfeited, merged, extinguished, surrendered, determined, or otherwise become void or voidable. *And that* for and notwithstanding any such act, deed, matter, or thing, as aforesaid, he the said [*vendor*] hath good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey the said freehold messuages or tenements, hereditaments and premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns. *And* to surrender the copyhold or customary messuages or tenements, lands and hereditaments, hereinbefore mentioned, and covenanted to be surrendered, to the use of the said [*purchaser*], his

and that he is seised in fee of copyholds, according to the custom of the manor of

and that the lease is subsisting, and is a good lease;

and that vendor has good right to convey freeholds,

surrender copyholds,

OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

heirs and assigns; and to assign the said leasehold piece or parcel of land and premises to the said [*purchaser*], his executors, administrators and assigns, for all the residue and remainder of the said term of years, in manner aforesaid, according to the true intent and meaning of these presents: *And further*, that it shall and may be lawful to and for the said [*purchaser*], his heirs, executors, administrators, and assigns respectively, from time to time, and at all times hereinafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy, the said freehold, copyhold, and leasehold premises hereby respectively granted and released, and covenanted to be surrendered and assigned, and every part thereof respectively, and to have, receive, and take, the rents, issues, and profits thereof, and of every part thereof respectively, to, and for his and their own use and benefit respectively, according to the true intent and meaning of these presents; without any lawful let, suit, trouble, denial, eviction, interruption, disturbance, claim or demand whatsoever, of or by him the said [*vendor*], his heirs, executors, or administrators, or any person or persons lawfully claiming, or to claim, by, from, or under, or in trust for him, them, or any of them, or the said [*testator*]. *And that* free and clear, freely and clearly acquitted, exonerated, released, and for ever discharged, or otherwise by him the said [*vendor*], his heirs, executors, or administrators, well and sufficiently saved, defended, and kept harmless and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, surrenders, jointures, dower, right and title of dower, uses, trusts, wills, entails, statutes merchant and of the staple, recognizances, judgments, extents, elegits, executions, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, done, omitted, committed, executed, or suffered, or hereafter to be had, made, done, executed, committed, or suffered, by him the said [*vendor*], or his heirs, or any other person or persons

and assign leaseholds;

and for quiet enjoyment by purchaser of the freeholds, copyholds, and leaseholds;

and free from incumbrances.

claiming, or to claim, by, from or under, or in trust for him, them, or any of them; or by, with, or through his, their, or any of their acts, deeds, means, privity, consent, default, or procurement; other than and except a quit rent of pounds a year; and a fine, not exceeding years quit rent, payable on the death or alienation of every tenant of the said copyhold or customary messuage or tenement, hereditaments and premises, with the appurtenances, *and also* except an heriot, not exceeding pounds, payable on the death of every tenant of the said messuage or tenement, *And* except the rents, covenants and agreements in and by the said recited indenture of lease reserved and contained, which from henceforth, on the tenant's or lessee's part, ought to be paid, observed, and performed; *And further*, that he the said [*vendor*], his heirs, executors and administrators, and all and every person or persons having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, reversion, use, trust, property, claim or demand whatsoever, at law or in equity, of, in, to, or out of the said messuages or tenements, lands, hereditaments and premises, hereby respectively released, covenanted to be surrendered and assigned or intended so to be, or any of them, or any part thereof respectively, by, from, or under, or in trust for him, them, or any of them, shall and will, from time to time, and at all times hereafter, upon the reasonable request, and at the costs and charges of the said [*purchaser*], his heirs, executors, administrators or assigns, respectively make, do, acknowledge, levy, suffer and execute, or cause and procure to be made, done, acknowledged, levied, suffered and executed, *All* and every such further and other lawful and reasonable acts, deeds, things, devices, conveyances, surrenders, assignments and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and assuring of the said freehold messuages or tenements, lands, hereditaments and premises, hereby granted and released, or intended so to be, *And* for surrendering and assuring of the said copyhold or customary messuages or tenements, lands, hereditaments and premises hereby covenanted to be surrendered, and every of them, and every part thereof, with their appurtenances, unto and to the use of him the said [*purchaser*], his heirs and

OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

except certain quit rents, &c.

And for further assurance of the freeholds, copyholds, and leaseholds.

OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

assigns; *And* for assigning and assuring the said leasehold piece or parcel of land and premises, hereby assigned, or intended so to be, with the appurtenances, unto the said [*purchaser*], his executors, administrators and assigns, in manner aforesaid, according to the true intent and meaning of these presents; as by the said [*purchaser*], his heirs, executors, administrators and assigns respectively, or his or their counsel in the law, shall be reasonably advised, devised and required, so as the party or parties, who shall be required to make and execute such further assurance or assurances, shall not be compelled or compellable for the making and doing thereof, to go or travel from his, her, or their usual place or places of abode; and so that no such further assurance or assurances contain or imply any further or other covenant or warranty, than against the person or persons who shall be required to make and execute the same, and against his or their heirs, executors and administrators' acts and deeds respectively. IN WITNESS, &c.

FEOFFMENT BY ONE CORPORATE BODY TO ANOTHER.

FEOFFMENT(*a*) *by one* CORPORATE BODY *to* ANOTHER, *with Warranty, and* MEMORANDUM OF LIVERY OF SEISIN.

THIS INDENTURE, made the day of ,

Parties. BETWEEN the master and the wardens of the guild or fra-

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Feoffment. (*a*) A feoffment is the most eligible assurance by which a corporation can convey. See 3 Byth. 159. 176. And it is to be remembered that a feoffment should always be adopted in conveying to a corporation sole, and not a lease and release, as a lease for years cannot be granted to a corporation sole and its successors; as being a chattel it will not go in succession, a corporation sole not being able to take a chattel except by custom, although a corporation aggregate may. Co. Litt. 9 a. 46 b. 4 Co. 65. Hob. 64. Harg. note (1).

ternity of the mystery of [*mercers*] of the city of , of the first part; the honourable the company of merchants trading to the East Indies, of the second part; [*attorney to deliver seisin*](*b*) of, &c. of the third part; and [*attorney to receive seisin*] of, &c. of the fourth part. WITNESSETH, that in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said company of merchants, to the said master and wardens in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of pounds, they the said master and wardens do hereby respectively admit and acknowledge, and of and from the same and every part thereof, do hereby respectively acquit, release, and for ever discharge the said company of merchants); THEY the said master and wardens (*c*) HAVE given, granted, enfeoffed and confirmed, *And* by these presents *Do* give, grant, enfeoff and confirm unto the said company of merchants(*d*) and their assigns, ALL THAT, &c. [*parcels*], *Together* with, &c. [*general words*], *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and enfeoffed, or intended so to be, with their and every of their appurtenances, unto the said company of merchants trading to the East Indies and their assigns, TO THE USE of the said

FEOFFMENT BY ONE CORPORATE BODY TO ANOTHER.

Testatum, that in consideration of purchase-money,

the master and wardens convey to the company,

Parcels.

Habendum to the company,

to the use of the company in fee.

(*b*) The powers to the attornies to deliver and receive seisin, are generally contained in the conveyance itself. Co. Litt. 52 b. They may however be contained in a separate instrument. Cro. Eliz. 905. Co. Litt. 52 b. And see Vol. IV. *tit.* FEOFFMENT.

Attornies.

(*c*) These words relate to the livery of seisin, which has taken place prior to the execution of the deed, and are therefore correct in a feoffment; the deed in this case being merely the evidence of the conveyance, and not the conveyance itself. 2 Bac. Ab. 483. But in all other deeds these words, although sanctioned by universal usage, may be safely omitted.

"Have, &c."

(*d*) As the conveyance is to a company, the word "successors" would be improper.

"Successors."

Indeed this word, in conveyances to corporations aggregate, is quite unnecessary. Co. Litt. 9 b. 94 b. Rol. Abr. 832 pl. 1. although in conveyances to corporations sole it is otherwise. Co. Litt. 8 b.

FEOFFMENT BY ONE CORPORATE BODY TO ANOTHER.

company of merchants trading to the East Indies and their assigns for ever. *And* the said master and wardens do hereby for themselves, their heirs, executors, and administrators, covenant, promise, and agree with the said company of merchants, and their assigns; *That* they the said master and wardens, and their successors and assigns, all and every the said messuages or tenements, lands, hereditaments and premises, hereby granted and enfeoffed, or intended so to be, against them the said master and wardens and their successors and assigns, and against all other persons whomsoever shall and will warrant, and for ever defend. *And* the said master and wardens *Do* by these presents make, nominate, constitute and appoint, and in their place and stead put the said [*trustee to deliver seisin*], as their true and lawful attorney, for and in the name of them the said master and wardens to enter into and upon, and then to deliver full and peaceable possession and seisin of the said messuages or tenements, lands, hereditaments and premises, hereby granted and enfeoffed, or of some of them, or some part thereof in the name of the whole, unto the said company of merchants, or to their attorney in that behalf lawfully constituted and appointed, according to the form, true intent and meaning of these presents. *And* the said company of merchants *Do* hereby make, nominate, constitute and appoint, and in their place and stead put the said [*trustee to receive seisin*], as their true and lawful attorney, for and in the name of them the said company of merchants to enter into and upon, and to accept from the said master and wardens full possession and seisin of all and singular the said messuages or tenements, lands, hereditaments and premises hereby granted and enfeoffed, or any part thereof, in the name of the whole, according to the form, effect, and true intent and meaning of these presents. IN WITNESS, &c. (*e*)

Warranty.

Power of attorney to deliver seisin.

Power of attorney to receive seisin.

Memorandum of livery of seisin, to be in-

BE IT REMEMBERED, that on the day and year first above written, the within named master and wardens, by

(*e*) See a form of the *testimonium* and *attestation*, 3 Byth. 177, and *post*, 328.

the within named [*trustee to deliver seisin*], their attorney, did deliver full and peaceable possession and seisin of the within mentioned messuages or tenements, lands, hereditaments and premises, and their appurtenances, unto the within named company of merchants, by the within named [*trustee to receive seisin*], their attorney, *To* hold the same unto the said company of merchants and their assigns for ever, according to the form and effect and true intent and meaning of the within written deed, in the presence of us, whose names are hereunto subscribed. WITNESS OUR HANDS,

dorsed (*a*) on the deed.

A. B. of, &c.
C. D. of, &c [*witnesses*].

(*a*) A memorandum of livery of seisin should always be indorsed on the feoffment; but if it be not indorsed, and there has been a long possession under the deed, although there is no evidence of its ever having been made, it will be presumed. *Jackson* v. *Jackson*, Fitzgib. 146. 1 Vern. 196. And equity will sometimes supply the want of livery. *Burgh* v. *Francis*, Finch, 28, 74. And if there is any other evidence to prove that livery of seisin was actually made, it will of course be admitted. *Hands* v. *James*, 2 Com. 530. *Doe dem. Barnett* v. *Stock*, Gow, N. P. C. 178.

Livery should be indorsed.

RELEASE BY A CORPORATION.

RELEASE *by a* CORPORATION *of Freeholds to a Purchaser, the* LEASE(*a*) *having been perfected by the* ENTRY *of the Lessee.*

Parties.

Testatum, whereby, in consideration of purchase-money, and receipt by corporation,

corporation conveys, to purchaser.

Reference to a demise for a year, whereupon an actual entry has been made.

THIS INDENTURE, made the day of , BETWEEN the mayor and commonalty of the (borough, city, *or* town and county of), of the one part; and [*purchaser*] of, &c. of the other part. WITNESSETH, that in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*], to the said mayor and commonalty in hand well and truly paid at or immediately before the sealing and delivery of these presents (the receipt of which said sum of pounds, they the said mayor and commonalty do hereby admit and acknowledge, and of and from the same, and every part thereof, do hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, and administrators), *They* the said mayor and commonalty *Have* granted, bargained, sold, aliened, released and confirmed, *And* by these presents *Do* grant, bargain, sell, alien, release and confirm unto the said [*purchaser*], (in his actual possession now being by virtue of a demise to him made by the said mayor and commonalty, in consideration of five shillings, by an indenture bearing date the day next before the day of the date (*b*) of these presents, for the term

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Lease for a year.

(*a*) See a form of the lease for a year, 3 Byth. 175. It must be remembered that this release operates by force of the common law, being grounded on a lease whereupon an actual entry has been made. See 3 Byth. 159.

Lease for a year.

(*b*) Where the lands are at a distance from the corporation, the lease must be dated some days previous to the release, in order that an entry may be made before the execution of the release; but where the loca-

of one whole year, commencing from the day next before the day of the date of the same indenture of demise, and by force of an actual entry made upon the said messuages or tenements, lands, hereditaments and premises, hereinafter described, and intended to be hereby granted and released), and his heirs, ALL THAT, &c. [*parcels*], *Together* with, &c. [*general words*], *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises, hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*], his heirs and assigns,(*c*) *To the use* of the said [*purchaser*], his heirs and assigns for ever; *And* the said mayor and commonalty do hereby for themselves and their successors, COVENANT, promise and agree with and to the said [*purchaser*], his heirs and assigns, that for and notwithstanding any act, deed, matter, or thing whatsoever, by them the said mayor and commonalty made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, they the said mayor and commonalty are at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their and every of their appurtenances, for a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee simple, without any manner of condition, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, charge, defeat, incumber, revoke, or make void the same; *And* that, &c. (*good right to convey, for quiet en-*

RELEASE BY A CORPORATION.

Parcels.

Habendum to purchaser,

to the use of purchaser in fee.

Covenants by corporation for title, and seisin in fee.

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lity will admit, the lease may be dated as usual, the day before the day of the date of the release. The reference to the lease for a year in the release, must of course be made to correspond with the fact.

(*c*) Uses may be declared, which will be called into operation by the statute, as they will be served by the seisin of the purchaser, or releasee to uses, and not by that of the corporation. If the purchaser desire to have the premises conveyed to uses to bar dower, see *ante*, 276.

Uses.

Dower.

RELEASE BY A CORPORATION.

joyment, free from incumbrances, and for further assurances, as ante, p. 258, *using the same expression,* " mayor and commonalty," *throughout the covenant*) ; IN WITNESS whereof, the said mayor and commonalty have hereunto set their common seal(*a*), the day and year first above written.

THE common seal of the within named mayor and commonalty, was at a common council held on the day of the date of the within written indenture affixed thereto by the said mayor, in the presence of us, [L. S.]

A. B. of, &c.
C. D. of, &c. [*witnesses*].

Common seal.

(*a*) A corporation must grant by its common seal. See the authorities referred to, 3 Byth. 177. But if a person pretending to be mayor puts the corporation seal to the deed, it does not thereby become the act of the corporation. Anon. 12 Mod. 423.

Delivery.

In a conveyance by a corporation, delivery of the deed is not necessary, the fixing of the common seal being tantamount thereto. *Willis v. Jermin,* Cro. Eliz. 167. *Derby Canal* v. *Wilmot,* 9 East, 360.

OF FREEHOLDS BY ONE TO TWO.

Conveyance *by* One *to* Two, *as* Tenants in Common, *or* Joint-Tenants, *with Variations for the Circumstances of the Purchasers being* Copartners, *and for their being* Trustees (*a*) *under a* Deed *or* Will.

Parties.

THIS INDENTURE, made the day of , Between [*vendor*] of &c. of the one part; and [A. B.] of, &c. and [C. D.] of, &c. of the other part. (*b*) Whereas the said [A. B.] and [C. D.] [*purchasers*] have contracted and agreed with the said [*vendor*] for the absolute purchase of the said messuages or tenements, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, with their appurtenances, and the inheritance thereof in fee simple in possession, free from incumbrances, at or for the price or sum of pounds; And whereas the said [*pur-*

Contract for purchase by two.

Desire of the purchasers to

Trustees of a settlement, &c.

(*a*) This form will answer for a conveyance to trustees under a will or settlement, who should take as joint tenants. In many cases it is better not to let it appear on the face of the conveyance that the purchasers are trustees, and to take a declaration of the trusts of the premises from them by a separate deed, as a future sale is thus facilitated, and the private affairs of the *cestuis que trust* not unnecessarily exposed. But if no future sale is contemplated, the settlement or will authorizing the purchase may be fully recited, setting out the power and the uses and trusts thereof at full length.

COPARTNERS.

(*b*) If the purchasers are copartners, and the premises are purchased for the purpose of the trade or business, recite as follows:

"Whereas, the said [*purchasers*] carry on the trade or business of a : And whereas, for the more conveniently and effectually carrying on the said trade or business, and for the purposes thereof, they have contracted," &c. *As above.*

OF FREEHOLDS BY ONE TO TWO.

chasers] are desirous that the said same messuages or tenements, hereditaments, and premises, should be conveyed to them in manner hereinafter mentioned: Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of pounds, by the said [A. B.] and [C. D.] in equal shares to the said [*vendor*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of pounds he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the [*purchasers*], and each of them, and their and each of their heirs, executors, and administrators), HE, the said [*vendor*] *hath* granted, bargained, sold, aliened, released, and confirmed; *And* by these presents *doth* grant, bargain, sell, alien, release, and confirm, unto the said [*purchasers*] in their actual, &c. (*reference to lease for a year*), and their heirs, ALL, &c. (*Parcels,*) *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singular other the premises, hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*purchasers*] and their heirs, (*a*) *To the use* of the said [*purchasers*], their heirs and assigns for ever, as tenants in common, *or* as joint-tenants (*b*);

have the premises conveyed,

Testatum, whereby, in consideration of purchase money in equal shares paid, and receipt thereof,

vendor conveys

Parcels.

Habendum to purchasers, to the use of purchasers as tenants in common, or as joint tenants.

TRUSTEES.

(*a*) If the settlement has been recited as mentioned in p. 329, n. (*a*), say, "and assigns: To the same uses, upon and for the same trusts, intents, and purposes, and with, under, and subject to the same powers, provisoes, conditions, and declarations, as are expressed and declared in and by the said hereinbefore recited indenture of settlement (*or* will), or such, or so many of them as are now capable of taking effect,"

It is most prudent to specify the tenure.

(*b*) Although if lands are conveyed to two persons without any explanation or qualification of the estate, they will hold as joint tenants, see *ante*, 17, yet it is most prudent, if it be intended that they should hold according to this tenure, to specify it. The same observation applies when a tenancy in common is wished to be created.

COPARTNERS.

If real estate is purchased by copartners for the purpose of their

And the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to each of them the said [*purchasers*], and each of their heirs and assigns (*c*), in manner following (that is to say); (*that vendor is seised in fee, as* ante, p. 259); *And* that for and notwithstanding any such act, deed, matter, or thing, as aforesaid, he the said [*vendor*] now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey the said messuages or tenements, hereditaments, and premises, hereby granted and released, or intended so to be, with the appurtenances, unto and to the use of the said [*purchasers*], their heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents: *And that*, [(*d*) it shall and may be lawful for the

Covenants for title.

good right to convey;

and for quiet enjoyment;

---

trade, it will be treated as part of their stock in trade, and be divided in all respects as personalty. *Thornton* v. *Dixon*, 3 B. C. C. 199. *Ripley* v. *Waterworth*, 7 Ves. 435. *Smith* v. *Smith*, 5 Ves. 193. *Balmain* v. *Shore*, 9 Ves. 500. In this case the property may be conveyed to a trustee and his heirs,

"to the use of the said [*trustee*], his heirs and assigns, *In trust* for the said [*copartners*], as part of the capital or joint stock of the copartnership in which they are now engaged, as aforesaid, and to convey and dispose of the same, as they or their respective executors, administrators, or assigns, shall, in that behalf, order or direct; It being the intent and meaning of the parties hereto, that the said hereditaments should be considered as or in the nature of personal estate, and should, on the dissolution or determination of the said copartnership, (if not otherwise previously disposed of,) be sold, and again converted into money; *And* that the money to be produced thereby should be applied in the same manner as the other part of the capital or joint stock of the copartnership:"

(*c*) If the premises be conveyed to joint tenants, say, "the said [*purchasers*], their heirs and assigns, in manner following,"

Joint tenants.

(*d*) If the premises have been conveyed to the uses of a marriage settlement, instead of the part in brackets insert as *ante*, p. 260.

OF FREEHOLDS BY ONE TO TWO.

said [*purchasers*], their heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to enter into, hold, occupy, possess, and enjoy the said messuages or tenements, hereditaments, and premises, hereby granted or released, or intended so to be, with their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for their own use and benefit,] without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of, from, or by any other person or persons whomsoever, lawfully or equitably claiming, or to claim, by, from or under, or in trust for him, them, or any of them; *And that* free and clear, freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [*vendor*], his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights and titles of or to dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had and made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered, by the said [*vendor*] or his heirs, or by any other person or persons lawfully or equitably claiming, or to claim, by, from or under, or in trust for him, them, or any of them; or by his or their acts, means, defaults, or procurements: *And further*, that he the said [*vendor*] and his heirs, and all other person or persons having, or claiming, or who shall hereafter have, or claim, any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuages or tenements, hereditaments, and premises, hereby granted or released, or intended so to be, with their appurtenances, or any of them, or any part

free from incumbrances;

and for further assurance.

thereof, by, from, or under, or in trust for him the said [*vendor*] or his heirs, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges of the said [*purchasers*], their heirs or assigns, make, do, acknowledge, suffer, and execute, or cause or procure to be made, done, acknowledged, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely granting and assuring the said messuages or tenements, hereditaments, and premises, hereby granted and released, or intended so to be, and every part thereof, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs or assigns, or as his or their counsel in the law shall be reasonably devised, advised, and required; so as no such further assurance or assurances contain or imply any further or other covenant or warranty, than against the person or persons who shall be required to make and execute the same, and his or their heirs, executors or administrators' acts and deeds, and so as the party or parties who shall be required to make such further assurance or assurances, be not compelled, nor compellable, for the making thereof, to go or travel from his, her, or their usual place or respective places of abode. IN WITNESS, &c.

BY JOINT TENANTS, TENANTS IN COMMON, AND COPARCENERS.

Release *of Freeholds by* Joint Tenants, Tenants in Common, *or* Coparceners, *to a Purchaser, to Uses to bar Dower.*

Parties.

THIS INDENTURE, made the day of , Between [*vendors*] (*a*), of the first part; [*purchaser*] of &c. of the second part; and [*trustee to bar dower*] of, &c. of the third part (*b*). Whereas the said [*purchaser*] hath

Contract for purchase.

contracted and agreed with the said [*vendors*] (*c*), for the absolute purchase of the messuages or tenements, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with their appurtenances, free from incumbrances, at or for the price or sum of

Desire of purchaser to have the premises conveyed.

pounds. And whereas the said [*purchaser*] is desirous that the same hereditaments and premises should be conveyed to the uses hereinafter mentioned. Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of pounds

Testatum, whereby, in consideration of purchase money, (receipt by joint tenants, &c.)

of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendors*], in equal shares, well and truly paid, at or before the sealing and delivery of these presents, (the receipt of which said sum of pounds, they the said [*vendors*] do hereby respectively admit and acknowledge, and of and from the same and every part thereof do hereby respectively acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, and

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Parties.

(*a*) If the parties are joint-tenants or coparceners, it is more correct to make them all of one part; but if tenants in common, of several parts.

Recitals.

(*b*) The history of the title should generally be recited. Recitals of all the usual ways of acquiring property in joint tenancy, coparcenary and tenancy in common, will be found *ante*, title Partition.

Variations in form.

(*c*) The form of the conveyance, whether it is by joint-tenants, tenants in common, or coparceners, will vary very slightly; wherever any alteration is necessary, it will be pointed out.

administrators), They the said [*vendors*] *have*, and (*d*) each of them *hath*, granted, bargained, sold, aliened, released, and confirmed; *And* by these presents *do*, and each of them *doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*] (in his actual, *&c.*) (*reference to lease for a year*). ALL, &c. (*parcels and general words*), *And* the reversion, &c. *And* all the estate, right, title, interest, inheritance, trust, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of them the said [*vendors*], and each and every of them, in, to, out of, or upon the same hereditaments and premises, and every part and parcel thereof, with their and every of their appurtenances. TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singular other the premises, hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*] and his heirs, to such uses, &c. (*uses to bar dower*, ante, 276). *And* the said [*one vendor*], so far as relates to one equal moiety (*e*), or half part or share of and in the said messuages or tenements, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, and so far as relates to the acts and deeds of himself, and of all persons claiming, or to claim, by, from, through, or under, or in trust for him, in respect of the same half part or share, but not further or otherwise, *doth* hereby, for himself, his heirs, executors, and administrators; *And* the said [*other vendor*] so far as relates to the other equal moiety, or half part or share of and in the same messuages or tenements, hereditaments, and premises, with their ap-

vendors convey

Parcels.

All the estate of joint tenants, &c.

Habendum to the purchaser, to uses to bar dower.

Covenant for title by joint tenants, tenants in common, or coparceners, as to their several shares.

(*d*) If there are more than two, say, "every of them" "Each."

(*e*) This will of course be varied according to the shares which the co-tenants take in the premises; for example: If there are three joint-tenants, &c., say, "equal third part or share of and in," &c. "Third or other share."

and thus, according to the interest of the parties in the premises conveyed.

BY JOINT TENANTS, TENANTS IN COMMON, AND COPARCENERS.

purtenances, and so far as relates to the acts and deeds of himself, and of all persons claiming, or to claim, by, from, through, or under, or in trust for him in respect of the same half part or share, but not further or otherwise, *doth* hereby for himself, his heirs, executors and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, in the manner and form following (that is to say):

that they are seised in fee;

That for and notwithstanding any act, deed, matter, or thing whatsoever, by them the said [*vendors*], or either of them, or any person or persons claiming by, from, through, or under, or in trust for them, or either of them, made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, they the said [*vendors*] are, at the time of sealing and delivering of these presents, lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said messuages or tenements, hereditaments and premises, hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, for a good, sure, perfect, absolute and indefeasible estate of inheritance in fee simple, without any manner of condition, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraints, cause, matter, or thing whatsoever, to alter, charge, defeat, incumber, revoke, or

and that they have good right to convey;

make void the same estate; *And that* for and notwithstanding any such act, matter, or thing as aforesaid, they the said [*vendors*] now have in themselves good right, full power, and lawful and absolute authority to grant, bargain, release, and convey the said messuages or tenements, hereditaments and premises, hereby granted and released, or intended so to be, with their appurtenances, to the uses and in manner aforesaid, according to the true intent and meaning of these presents,

and for the quiet enjoyment of the purchaser;

And that the said messuages or tenements, hereditaments and premises, hereby granted and released, or intended so to be, with the appurtenances, shall and may, from time to time, and at all times hereafter, remain and be *To the uses* hereinbefore declared of and concerning the same, and the rents, issues, and profits thereof, and of every part thereof, be received and taken accordingly, without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of, or by

them the said [*vendors*] or their heirs, or of, from, or by any person or persons whomsoever, lawfully or equitably claiming, or to claim by, from, through, or under, or in trust for them, or any of them; *And that* free and clear, freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [*vendors*] respectively, and their respective heirs, executors and administrators, well and sufficiently saved, defended, kept harmless and indemnified, of, from, and against all, and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights and titles of dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant, or of the staple, recognizances, judgments, executions, extents, rents, arrears of rents, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already or hereafter to be had, made, executed, occasioned, or suffered by the said [*vendors*] respectively, or their heirs, or by any person or persons lawfully or equitably claiming, or to claim by, from, through, or under, or in trust for them, or any of them, or by his or their acts, means, defaults, or procurements; *And lastly*, that they the said [*vendors*] respectively, and their respective heirs, and all and every person and persons whomsoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuages or tenements, hereditaments and premises, hereby granted and released, or intended so to be, and their appurtenances, or any of them, or any part thereof, by, from, or under, or in trust for them the said [*vendors*] or their heirs, or any of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, at the proper costs and charges of the person or persons making such request, make, do, acknowledge, levy, suffer and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and

BY JOINT TENANTS, TENANTS IN COMMON, AND COPARCENERS free from incumbrances;

and for further assurance.

BY JOINT TENANTS, TENANTS IN COMMON, AND COPARCENERS.

assurances in the law whatsoever, for the better and more perfectly and absolutely granting, conveying, and assuring of the said messuages or tenements, hereditaments, and premises, hereby granted and released, or intended so to be, and every part thereof, with their appurtenances, to the uses and in the manner aforesaid, and according to the true intent and meaning of these presents, as by the person or persons making such request as aforesaid, and his, her, or their counsel in the law, shall be reasonably devised, advised, and required, so as no such further assurance or assurances contain or imply any further or other covenant or warranty than against the person or persons who shall be required to make and execute the same, and his, her, or their heirs, executors, and administrators' acts and deeds; and so as the party or parties who shall be required to make such further assurance or assurances, be not compelled or compellable, for the making thereof, to go or travel from his, her, or their usual place or places of abode. IN WITNESS, &c.

COPYHOLDS BY JOINT-TENANTS, TENANTS IN COMMON, OR COPARCENERS.

COVENANT *to* SURRENDER COPYHOLDS *to Purchaser by* JOINT-TENANTS, TENANTS IN COMMON, *or* COPARCENERS (*by reference to other Forms*). (*a*)

Parties. Recitals by reference. Testatum, whereby joint

THIS INDENTURE, made the day of , BETWEEN [*vendors*] of, &c. of the one part; and [*purchaser*] of, &c. of the other part; (*recite agreement for purchase, and desire of purchaser, as* ante, p. 297-8.) Now THIS INDENTURE WITNESSETH, that in pursuance and

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Parties.

(*a*) The same observation applies to this precedent as to the conveyance of freeholds by joint-tenants, &c. See p. 334, n. (*a*).

performance of the said agreement, and in consideration (*consideration, and receipt, as* ante, p. 334), *They* the said [*vendors*] (*covenant, as to their respective shares, with purchaser, to surrender the same to his use, as* ante, p. 299, *and see covenants by joint-tenants, &c. for title, as* ante, p. 335, *using the expressions* "surrender" *and* "surrendering," *for* "grant" *and* "granting," *as* ante, p. 300-3). IN WITNESS, &c.

COPYHOLDS BY JOINT-TENANTS, TENANTS IN COMMON, OR COPARCENERS.

tenants covenant to surrender.

CONVEYANCE *from* MORTGAGEE *for a* TERM, MORTGAGEE *in* FEE, *and* MORTGAGOR, *to Purchaser, to Uses to bar Dower: Payment of* MORTGAGE SUMS *and* PURCHASE MONEY *in Recitals.*

FROM MORTGAGEE FOR A TERM, MORTGAGEE IN FEE, AND MORTGAGOR.

THIS INDENTURE, made the day of , BETWEEN [*mortgagee for a term of years*] of, &c, of the first part; [*mortgagee in fee*] of, &c. of the second part; [*vendor*] (*a*) of, &c. of the third part; [*purchaser*] of, &c. of the fourth part; (*trustee for purchaser to bar dower*) of, &c. of the fifth part: WHEREAS [*testator*] being, at the time of making his will, hereinafter recited, and thenceforth to the time of his decease, seised of or otherwise well entitled in fee simple in possession, to the messuages or tenements, lands, and hereditaments, hereinafter described, and intended to be hereby granted and released, with their appurtenances, did, in such manner as the law requires

Parties.

Recital of will, whereby premises were conveyed to vendor.

(*a*) As no right of dower attaches on an equity of redemption, if the mortgage was made before the vendor's marriage, his wife need not be made a party.

Dower.

FROM MORTGAGEE FOR A TERM, MORTGAGEE IN FEE, AND MORTGAGOR.

for rendering valid devises of freehold estates, duly sign and publish his last will and testament in writing, bearing date the day of , and thereby, amongst other things, gave and devised the messuages or tenements, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, with their appurtenances, unto the said [*vendor*], his heirs and assigns for ever: AND WHEREAS by an indenture of demise, by way of mortgage, bearing date the day of , and made, or expressed to be made, between the said [*vendor*] of the one part, and the said [*mortgagee for term*] of the other part, the messuages or tenements, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, with their appurtenances, were, (in consideration of the sum of pounds, by the said [*mortgagee for term*] to the said [*vendor*] paid, as in the said indenture now in recital is mentioned), demised by the said [*vendor*] unto the said [*mortgagee for term*], his executors, administrators, or assigns, for and during the term of years, from thence next ensuing, and fully to be complete and ended; *But* subject, nevertheless, to a proviso or condition in the same indenture contained, for making void the same term, on payment by the said [*vendor*], his heirs, executors, administrators or assigns, to the said [*mortgagee for term*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same, after the rate of 5*l.* for 100*l.* at the times, and in the manner therein mentioned and appointed for the payment thereof: AND WHEREAS the said principal sum of pounds was not then paid, and is now due and owing; but all interest due thereon hath been regularly paid, as he the said [*mortgagee for term*] doth hereby admit and acknowledge. AND WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , and made, or expressed to be made, between the said [*vendor*], of the one part, and the said [*mortgagee in fee*] of the other part; the said messuages or tenements, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, with their appurtenances, were (in

Of mortgage by vendor for a term of years,

and that default was made in payment of mortgage-money, but that all interest has been paid;

mortgage by vendor of reversion,

consideration of the sum of pounds, by the said [*mortgagee in fee*] to the said [*vendor*] paid, as in the said indenture of release is mentioned,) conveyed by the said [*vendor*] unto the said [*mortgagee in fee*], his heirs and assigns for ever; but subject to the said mortgage so made to the said [*mortgagee for a term*], as aforesaid, and the principal and interest thereby secured, *And* also subject to a proviso or condition in the said indenture of release contained, for the redemption of the said premises, on payment by the said [*vendor*], his heirs, executors, administrators, or assigns, to the said [*mortgagee in fee*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same, after the rate of 5*l.* for 100*l.* at the times, and in the manner therein mentioned and appointed for the payment thereof. AND WHEREAS the said principal sum of pounds was not then paid, and is now due and owing, as well as a considerable arrear of interest thereon, amounting in the whole to the sum of pounds, as he the said [*vendor*] doth hereby admit and acknowledge. AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said messuages or tenements, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, and the inheritance thereof in fee simple, with the appurtenances, free from incumbrances, at or for the price or sum of pounds, to be paid in the manner hereinafter mentioned: AND WHEREAS, on the treaty for the said purchase, it hath been agreed that the said sum of pounds, so due and owing, on the security of the said hereinbefore recited indenture of the day of , as aforesaid, should be paid off, and that the said [*mortgagee for term*] should join in the conveyance of the said messuages or tenements, lands, hereditaments, and premises, as hereinafter is mentioned: AND WHEREAS, on the treaty for the said purchase, it hath also been agreed, that the said sum of pounds, together with the sum of pounds, so respectively due and owing to the said [*mortgagee in fee*], for principal and interest on the security of the said hereinbefore recited indentures of lease

FROM MORTGAGEE FOR A TERM, MORTGAGEE IN FEE, AND MORTGAGOR.

and that default has been made in the payment of the mortgage money;

and that there is a large arrear of interest due.

Contract for the purchase of the premises,

and agreement to pay off mortgage for term, and that mortgagee for term should join;

and mortgage in fee, and that mortgagee in fee should join;

FROM MORTGAGEE FOR A TERM, MORTGAGEE IN FEE, AND MORTGAGOR.

and release, of the and days of , as aforesaid, should be paid off, and that the said [*mortgagor in fee*] should join in such conveyance, as hereinafter is also mentioned. AND WHEREAS the said [*purchaser*] hath this day, with the privity, consent, and approbation of the said [*vendor*] (testified by his being a party to and sealing and delivering these presents), well and truly paid unto the said [*mortgagee for term*] the sum of pounds, being the whole amount of the principal monies, and interest, due on the security of the said hereinbefore recited indenture of the day of , as he the said [*mortgagee for term*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit and release, and for ever discharge the said [*vendor*] and the said [*purchaser*], their and each of their heirs, executors, and administrators: AND WHEREAS the said [*purchaser*] hath this day also, with the like privity and consent of the said [*vendor*] (testified as aforesaid) paid unto the said [*mortgagee in fee*] the sum of pounds, being the whole of the principal and interest monies due on the security of the said hereinbefore recited indentures of the and days of , as he the said [*mortgagee in fee*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*vendor*] and the said [*purchaser*], their and each of their heirs, executors, and administrators. AND WHEREAS, the said [*purchaser*] hath also this day paid unto the said [*vendor*] the sum of pounds, being the residue of the said sum of pounds, so agreed to be paid for the said messuages or tenements, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, with the appurtenances, as aforesaid, and which said sum of pounds, together with the said sum of pounds, and pounds, so paid as aforesaid, he the said [*vendor*] doth hereby accept, and declare to be in full for the sum of pounds, contracted and agreed to be paid by the said [*purchaser*], for the price and purchase of the said premises, and of and from the same, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, execu-

that purchaser hath paid off mortgage for term, as mortgagee admits;

and mortgagee in fee, as he admits;

payment of residue of purchase-money to vendor, as he admits.

tors, administrators, and assigns: AND WHEREAS the said [*purchaser*] is desirous that the said messuages or tenements, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, with their appurtenances, should be conveyed and limited to the uses hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the several payments so respectively made by the said [*purchaser*], as hereinbefore is mentioned, HE the said [*mortgagee for term*] to the intent that the said term may merge in the reversion, freehold, and inheritance of the said premises; and at the request and by the direction of the said [*mortgagee in fee*] and [*mortgagor*], (testified by their respectively being parties to, and sealing and delivering these presents), and upon the acceptance of the said [*purchaser*], and according to his estate and interest, and so far as he can or may at law or in equity, *Hath* bargained, sold, assigned, and set over; *And* by these presents, *doth* bargain, sell, assign, and set over; *And* he the said [*mortgagee in fee*], at the like request and direction of the said [*mortgagor*], (testified as aforesaid), and according to his estate and interest, and so far as he can or may at law or in equity, *hath* bargained, sold, aliened, and released, *And* by these presents, *doth* bargain, sell, alien, and release, *And* he the said [*mortgagor*] *hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], (in his actual, &c. *reference to lease for a year*) and his heirs: ALL, &c. (*the parcels*), Together with, &c. (*general words*); *And* the reversion, &c.; *And* all the estate, &c., TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances, (freed and for ever discharged of and from the said several sums of pounds, and pounds (*the mortgage sums*), and the interest thereof, and every part thereof respectively, and all claims and demands for or on account of the same) unto the said [*purchaser*], his heirs and assigns, to such uses, &c. (*uses to bar dower, see ante,*

Desire of purchaser to have the premises conveyed.

Testatum, in consideration of the payments hereinbefore made,

mortgagees and mortgagor convey.

Habendum.

FROM MORTGAGEE FOR A TERM, MORTGAGEE IN FEE, AND MORTGAGOR.

276). *And* each of them the said [*mortgagees*] doth hereby for himself, his heirs, executors, and administrators, and for his own acts and deeds, but not further or otherwise, COVENANT, promise, and agree with and to the said [*vendor*] and [*purchaser*], their and each of their heirs and assigns, *That* they the said [*mortgagees*] have not, or hath not at any time heretofore made, done, committed, executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof the said messuages or tenements, lands, hereditaments and premises, hereby granted and released, or intended so to be, or any of them, or any part thereof are, is, can, shall, or may be in anywise impeached, charged, affected, or incumbered; *And* the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*] and his heirs, that for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said [*vendor*], or the said [*mortgagees*] made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary; he the said [*vendor*] and [*mortgagee in fee*] are, or one of them is, at the time of the sealing and delivering of these presents, lawfully and rightfully seised of and in, or well entitled to the said messuages or tenements, lands, hereditaments and premises hereinbefore described, and hereby granted and released, or intended so to be, with their appurtenances, without any manner of condition, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, defeat, incumber, revoke, or make void the same estate; *And that* for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said [*vendor*] and [*mortgagees*], or one of them, now hath in themselves or himself, good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey the said messuages or tenements, lands, hereditaments and premises, hereinbefore described, and hereby granted and released, or intended so to be, and their appurtenances, to the uses, upon the trusts, and in the manner aforesaid, according to the true intent and meaning of these presents;

Covenant by the mortgagees that they have not incumbered the premises.

Covenant by vendor for title as against the acts of himself and the mortgagees;

seised in fee;

good right to convey;

FROM MORTGAGEE FOR A TERM, MORTGAGEE IN FEE, AND MORTGAGOR.

And that the said messuages or tenements, lands, hereditaments and premises, hereinbefore described, and hereby granted and released, or intended so to be, and their appurtenances, shall from time to time, and at all times hereafter, remain and be, to the uses, upon the trusts, and in the manner aforesaid, and be peaceably and quietly held, occupied, possessed, and enjoyed, and the rents, issues, and profits thereof be received and taken accordingly, without any lawful let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever, of or by them the said [*mortgagees*] and [*vendor*], or their heirs, or any person or persons whomsoever, lawfully or equitably claiming, or to claim by, from, or under, or in trust for them, or any of them; *And that* free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said [*vendor*], his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all, and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights and titles of dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeiture, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had and made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered by the said [*vendor*], or [*mortgagees*], or his heirs, or any person or persons lawfully or equitably claiming or to claim by, from, or under, or in trust for him, them, or any of them; *And further*, that he the said [*vendor*] and his heirs, and all and every person and persons whosoever having or claiming, or who shall or may hereafter have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, in, to, or out of, or upon the said messuages or tenements, lands, hereditaments and premises, hereinbefore described, and hereby granted and released, or intended so to be, and their ap-

for quiet enjoyment;

free from incumbrances;

and further assurance.

FROM MORTGAGEE FOR A TERM, MORTGAGEE IN FEE, AND MORTGAGOR.

purtenances, or any part thereof, by, from, or under, or in trust for them the said [*vendor*] and [*mortgagees*], or his heirs, or their executors and administrators, shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the costs and charges of the said [*purchaser*], his heirs and assigns, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and assuring of the said messuages or tenements, lands, hereditaments and premises, hereinbefore described, and hereby granted and released, or intended so to be, and their appurtenances, to the uses, upon the trusts, and in manner aforesaid, according to the true intent and meaning of these presents, as by the said [*purchaser*], his heirs or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required; so as no such further assurance or assurances contain or imply any further or other covenant or warranty, than against the person or persons who shall be required to make and execute the same, and his or their heirs, executors, and administrators' acts and deeds; and so as the party or parties who shall be required to make or execute such further assurance or assurances, be not compelled or compellable, for the making or executing thereof, to go or travel from his, her, or their usual place or respective places of abode. (*a*) IN WITNESS, &c.

(*a*) See RELEASE, *post*, 351.

CONVEYANCE *by* MORTGAGEE IN FEE *and* MORTGAGOR, *where the* MORTGAGE-MONEY *and Interest have been* PAID, *to Purchaser to Uses to bar* DOWER; *with Variation for the Conveyance by a* MORTGAGEE *for a Term, and for a Conveyance of the Legal Estate by the* INFANT HEIR *of Mortgagee, under the* 6 *Geo. IV. c.* 74.

MORTGAGEE AND MORTGAGOR, WHERE THE MONEY HAS BEEN PAID —INFANT HEIR.

THIS INDENTURE, made the day of , BETWEEN [*mortgagee*] of, &c. of the first part; [*vendor*] of, &c. of the second part; [*purchaser*] of, &c. of the third part; and [*trustee for purchaser*] of the fourth part (*recite the deed or will by which vendor claims. See* ante, p. 339.) AND WHEREAS, by indentures of lease and release, bearing date respectively on or about the and days of , and made, or expressed to be made, between the said [*vendor*] of the one part, and the said [*mortgagee*] of the other part; the messuage or tenement, hereditaments, and premises, hereinafter described, or intended to be hereby granted and released, with the appurtenances, were (in consideration of the sum of pounds, by the said [*mortgagee*] to the said [*vendor*] paid, as in the said indenture of release is mentioned) conveyed by the said [*vendor*] unto the said [*mortgagee*], his heirs (*a*) and assigns for ever; but subject to a proviso or condition in the said indenture of release contained, for the redemption of the said premises, on payment of the said [*vendor*], his heirs, executors, administrators, or assigns, to the said [*morgagee*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same, after the rate of 5*l.* for 100*l.* at the

Parties.

Recital of indentures of lease and release, whereby vendor mortgages the premises in fee.

(*a*) If the mortgage was for a term. See *ante*, 340.

MORTGAGEE AND MORTGAGOR, WHERE THE MONEY HAS BEEN PAID —INFANT HEIR.

times, and in the manner therein mentioned and appointed for the payment thereof: AND WHEREAS, on or about the day of , the said [*vendor*] duly paid unto the said [*mortgagee*] the principal sum of

Payment of mortgage-money;

pounds, so due to him on the security of the said hereinbefore recited indentures, and all interest thereupon, as he the said [*mortgagee*] doth hereby admit and acknowledge: AND WHEREAS, no re-conveyance of of the said messuage or tenement, hereditaments, and premises, has been made to the said [*vendor*],

but no reconveyance has been taken.

Contract for purchase.

AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said messuage or tenement, hereditaments, and premises, hereafter described, and intended to be hereby granted and released, with the appurtenances, and the inheritance thereof in fee simple, free from incumbrances, at or for the price or sum of pounds. AND WHEREAS the said [*mortgagee*] (at the request of the said [*mortgagor*]) hath agreed to join in the conveyance of the same hereditaments and premises, and to execute such release as hereinafter is mentioned:

Agreement of mortgagee to join.

Desire of purchaser to have the premises conveyed.

AND WHEREAS the said [*purchaser*] is desirous that the same hereditaments and premises should be conveyed to the uses, and in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, *And* in consideration of, &c. (*payment of purchase money, and receipt thereof, as* ante, p. 256), HE (*a*), the said (*mortgagee*], at the request and by the direction of the said [*vendor*] (testified by his being a party to and sealing and and delivering these presents), *Hath* granted, bargained,

Testatum, whereby mortgagee and vendor convey.

Mortgage for a term.

(*a*) If the mortgage was for a term, the term may either be merged, or assigned to attend. If the former, see the proper form, *ante*, 343; if the latter, see *ante*, 292.

Infant heir. 6 Geo. 4, c. 74.

If the legal estate in the premises be vested in an infant heir, or devisee of the mortgagee, he will, on an application to the Courts of Chancery or Exchequer, be directed to convey it to such person or persons as have a right to have it conveyed to them; 6 Geo. IV. c. 74. s. 2. In such case the infant will be of the first part, and after the recital of

sold, aliened, and released, *And* by these presents *Doth* grant, bargain, sell, alien, and release; *And* the said [*vendor*] *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell,

MORTGAGEE AND MORTGAGOR, WHERE THE MONEY HAS BEEN PAID —INFANT HEIR.

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the mortgage, the death of the mortgagee, and his will or intestacy, as the case may be, for which see *Index, voce* RECITALS, the following recitals should be introduced :—

INFANT.

"AND WHEREAS, by an order of the High Court of Chancery (*or* Exchequer), made on the day of , in the matter of the said [*infant*], upon the petition* of the said [*vendor*], it was referred to A. B., Esq. one of the masters (*or* deputy remembrancers) of the said court, to examine and certify whether the said [*infant*] was an infant and a trustee, within the meaning of an act of parliament made and passed in the 6th year of the reign of his present majesty King George the Fourth, intituled "An Act for consolidating and amending the laws relating to conveyances and transfers of estates and funds vested in trustees who are infants, idiots, lunatics, or of unsound mind, or who cannot be compelled, or refuse to act, and also the laws relating to stocks and securities belonging to infants, idiots, lunatics, and persons of unsound mind." AND WHEREAS the said master (*or* deputy remembrancer) did, on the day of , make his report, and did thereby certify, that the said [*vendor*] did in his lifetime pay to the said [*testator*] (*or* [*intestate*]) the principal sum of pounds, so due to him as aforesaid, on the security of the said indentures, and all interest due thereupon; but that the said [*testator*] (*or* [*intestate*]) departed this life before any reconveyance of the said hereditaments and premises was made; *And* that the legal estate therein is now vested in the said [*infant*], as his heir at law, or devisee; *And* that the said [*infant*] is a trustee within the meaning of the said act. AND WHEREAS, by another order of the said court of chancery, bearing date on or about the day of , made on the same matter, it was ordered, that the said master's report should be con-

Order of reference to master.

Master's report.

Confirmation of report.

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* The words of the act do not direct how the application is to be made. It may be doubted whether it might not be made by motion.

MORTGAGEE AND MORTGAGOR, WHERE THE MONEY HAS BEEN PAID —INFANT HEIR.

alien, release, and confirm unto the said [*purchaser*], in his actual, &c. (*reference to lease for a year*), and his heirs, ALL THAT, &c. (*parcels and general words*]; *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuage or tenement, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*] and his heirs, (freed and for ever discharged from the mortgage debt or sum of pounds, and the interest thereof, and all claims and demands for or on account of the same,) to such uses, &c. (*uses to bar dower, see* ante, p. 276; *covenant by mortgagee against incumbrances, as* ante, p. 344; *covenants for title by mortgagor, as to the acts of himself and mortgagee, see* ante, p. 344); AND THIS

Second testatum.

INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement, *He*, the said [*mortgagee*] *doth* hereby acquit, release, and discharge the said [*vendor*], and the said [*purchaser*], their and each of their heirs, executors, administrators, and assigns, and his and their, and each and every of their estates and effects whatsoever and wheresoever, from the said mortgage debt of pounds, and the interest thereof, and every part thereof, respectively, and from all claims and demands

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firmed; *And* that the said [*infant*] should release and convey the said messuage or tenement, hereditaments and premises, pursuant to the said act of parliament, (*then contract for purchase as above*). NOW THIS INDENTURE WITNESSETH, that in obedience to the said order, and in pursuance and performance of the said agreement, *And* in consideration of the sum of 10*s*. by the said [*purchaser*] to the said [*infant*] paid, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), he the said [*infant*], by the direction of the said [*vendor*] (testified by his being a party to, and sealing and delivering these presents), *Hath* bargained, sold, and released, *And* by these presents *Doth*, &c. *And* the said [*vendor*] *Hath*," &c. *as above.*

whatsoever, for or on account thereof, respectively. (*a*) IN WITNESS, &c.

(*a*) This witnessing part is frequently inserted in practice; but it is quite unnecessary, and may be safely omitted. If there are two mortgagees, it will be as follows:

Release by the mortgagees from their several mortgage debts.

AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said sums of pounds, and pounds, so respectively paid to them the said [*mortgagee for term*] and [*mortgagor in fee*], as hereinbefore is mentioned. They the said [*mortgagees*] *Do*, and each of them *doth* hereby acquit, release, and discharge the said [*vendor*] and the said [*purchaser*], their and each of their heirs, executors, administrators, and assigns, and his and their, and each and every of their estates and effects whatsoever and wheresoever, from the said mortgage debts of pounds and pounds, and the interest thereof respectively, and every part thereof respectively, *And* from all claims and demands whatsoever, for or on account thereof, respectively. IN WITNESS, &c.

BY VENDOR AND ANNUITANT, AND TRUSTEE OF TERM.

Conveyance by VENDOR AND ANNUITANT *to Purchaser by Lease and Release, and* ASSIGNMENT *of the* TERM, *created for securing the Annuity, to Purchaser, to the end that it may* MERGE.

Parties.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the first part; [*annuitant*] of, &c. of the second part; [*purchaser*] of, &c. of the third (*a*) part; [*trustee of term*] of, &c, of the fourth part; and the said [*purchaser*], of the fifth part. (*b*)

Recital of indenture, whereby premises are charged with an annuity.

WHEREAS by an indenture bearing date on or about the day of , and made or expressed to be made between the said [*vendor*] of the first part, the said [*annuitant*] of the second part, and the said [*trustee*] of the third part, the said [*grantor*] did, (in consideration of the sum of pounds, to him paid by the said [*annuitant*], as therein is mentioned) give and grant unto the said [*annuitant*], his executors, administrators, and assigns, one annuity or clear yearly rent or sum of pounds, for and during the natural life of the said [*grantor*], to be charged and chargeable upon and yearly issuing of, ALL THAT, &c. (*set out the parcels*); *To have*, hold, receive, and take the same annuity, yearly rent, or sum of pounds, unto the said [*annuitant*], his executors, administrators, and assigns, from thenceforth for and during the life of the

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Dower.

(*a*) If dower is to be barred, make "[*trustee to bar dower*] of the fourth part," the trustee of the annuitant of the fifth part, and the purchaser of the sixth part.

Recitals.

(*b*) The history of the title to the fee should be recited, according to the circumstances.

BY VENDOR AND ANNUITANT, AND TRUSTEE OF TERM.

said [*annuitant*], to be paid as therein is mentioned; *And* by the said indenture now in recital, the said [*vendor*] did give and grant unto the said [*annuitant*], his executors, administrators or assigns, the usual powers of entry and distress for compelling payment of the said annuity, yearly rent or sum, when and as the same should be in arrear; with usual powers,

And by the said indenture now in recital, the said [*vendor*] did grant and demise unto the said [*trustee*], his executors, administrators, and assigns, all and singular the said messuages or tenements, lands, hereditaments and premises thereinbefore described, and thereby charged with the said annuity or yearly rent or sum as aforesaid, and their appurtenances, *To hold* the same unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date of the said indenture now in recital, for and during, and unto the full end and term of ninety-nine years from thenceforth next ensuing, and fully to be complete and ended, if the said [*annuitant*] should so long live, without impeachment of waste, upon the trusts in the said indenture now in recital declared concerning the same, for securing the payment of the same annuity or yearly rent or sum; and demise of the premises to trustee for a term;

And by the said indenture now in recital, it was provided and agreed that it should be lawful for the said [*vendor*], his heirs, executors, administrators, or assigns, at any time thereafter to re-purchase the said annuity, or yearly rent, or sum thereby granted, on giving fourteen days notice in writing of his or their intention so to do to the said [*annuitant*], his executors, administrators, and assigns, and on paying to him or them the sum of pounds, together with all arrears of the said annuity or yearly rent or sum of pounds, up to the day of repurchasing the same, and all costs and expenses which should have been incurred by reason of the non-payment thereof; and power to repurchase the annuity.

And whereas the said [*purchaser*] hath contracted and agreed with the said [*vendor*], for the absolute purchase of the said messuages or tenements, lands, hereditaments, and premises, hereinbefore described, and intended to be hereby granted and released, and their appurtenances, and the inheritance thereof in fee simple, free from incumbrances, at or for the price or sum of pounds. Contract for the purchase of the premises.

And whereas all arrears of the said annuity or yearly rent

BY VENDOR AND ANNUITANT, AND TRUSTEE OF TERM.

or sum of pounds, so granted or secured as aforesaid, have been duly paid or satisfied up to the day of , as the said [*annuitant*] doth hereby admit and acknowledge, testify and declare; AND WHEREAS on the treaty for the said purchase, it was agreed that the said annuity, or yearly rent or sum of pounds, should be re-purchased at or for the price or sum of pounds, *And* that such last mentioned sum should be paid out of the said sum of pounds [*purchase money*], *And* that the said [*annuitant*] should execute such release as hereinafter is contained; AND WHEREAS it was also agreed that the said term of years should be assigned by the said [*trustee*], in order that the same may be merged in the freehold inheritance or reversion of the said hereditaments and premises, in the manner hereinafter mentioned; Now THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds [*repurchase money*], by the said [*purchaser*] to the [*annuitant*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt of which said sum of pounds, he the said [*annuitant*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*vendor*] and the said [*purchaser*], their and each of their heirs, executors, administrators, and assigns); *And* also in consideration of the sum of pounds, the residue of the said price or sum of pounds [*purchase money*], by the said [*purchaser*] to the said [*vendor*] at the same time well and truly paid (the receipt of which last mentioned sum of pounds, the said [*vendor*] doth hereby admit and acknowledge, and of and from the same and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators and assigns); HE the said [*vendor*] (with the privity and consent of the said [*annuitant*], testified by his being a party to, and sealing and delivering these presents), *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], in his actual, &c. (*reference to lease for a year, &c. and his heirs*),

and that all arrears of the annuity have been paid.

Agreement to repurchase annuity.

Agreement to merge term.

Testatum, whereby, in consideration of the payment of repurchase-money, and of residue of purchase-money, vendor conveys,

BY VENDOR AND ANNUITANT, AND TRUSTEE OF TERM.

ALL THOSE the said messuages or tenements, lands, hereditaments, and premises described in, and charged by the said hereinbefore recited indenture of the day of , with their and every of their appurtenances, *And* the reversion, &c., *And* all the estate, &c., TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and their appurtenances, unto the said [*purchaser*] and his heirs, *To* the use (*a*) of the said [*purchaser*], his heirs and assigns for ever. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the sum of pounds, so paid by the said [*purchaser*] to the said [*annuitant*] as hereinbefore is mentioned, *He* the said [*annuitant*] doth hereby acquit, release (*b*), and for ever discharge the said [*vendor*] and the said [*purchaser*], their and each of their heirs, executors, administrators, and assigns, and their and every of their estates and effects whatsoever and wheresoever, and also all those the said messuages or tenements, lands, hereditaments, and premises, hereinbefore described, and hereby granted and released, or intended so to be, and every part thereof, of and from the annuity or yearly rent or sum of pounds, and all arrears thereof, and all charges and expenses occasioned by the nonpayment thereof, or otherwise; *And* all claims and demands whatsoever, for or on account of the same, respectively, (*covenant from the annuitant to the vendor and purchaser, that he has not incumbered the premises; see* ante, p. 293). (*Covenants for*

the premises described in the recited indenture.

Habendum.

Second witnessing part,

release by the annuitant from the annuity.

(*a*) If the premises are to be conveyed to uses to bar dower, see *ante*, 276. Dower.

(*b*) The release is frequently inserted in the deed of conveyance; but the more advisable plan perhaps would be to take the release by a separate deed, in which case all allusion to the annuity in this deed should be omitted. No saving in stamp duty would be made by inserting the release in the deed, as a separate stamp on the repurchase would be necessary in both cases. See 55 Geo. III. c. 184, s. 31, and Schedule, *tit.* CONVEYANCE, and *ante*, 270. The proper form of such a release will be given under the title RELEASE. Release by separate deed.

BY VENDOR AND ANNUITANT, AND TRUSTEE OF TERM.

Third witnessing part, whereby trustee assigns term to purchaser, to the intent that it may merge.

title, by the vendor with the purchaser, as to the acts of himself and annuitant, ante, 344.) AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance, and in further performance of the said agreement, *And* for the considerations aforesaid; *And* also in consideration of the sum of ten shillings, of like lawful money, by the said [*purchaser*] to the said [*trustee*] paid at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), *He* the said [*trustee*] (with the privity and consent, and by the direction of the said [*annuitant*], *And* also with the privity and consent of the said [*vendor*] (testified by their respectively being parties to, and sealing and delivering these presents), *Hath* bargained, sold, assigned, and surrendered, *And* by these presents *Doth* bargain, sell, assign, and surrender unto the said [*purchaser*], ALL and singular the said messuages or tenements, lands, hereditaments, and premises described in, and charged by the said hereinbefore recited indenture of the day of , as aforesaid, and hereby granted and released, or intended so to be, with their and every of their appurtenances; *And* all the estate, &c. To the end and intent that the said term of ninety-nine years, created by the said hereinbefore recited indenture of the day of , as aforesaid, may be henceforth merged and extinguished in the reversion, freehold, and inheritance of the hereditaments and premises hereby granted and released, or intended so to be, with the appurtenances. (*Covenant by trustee with vendor and purchaser, that he has not incumbered, as* ante, p. 293). IN WITNESS, &c.

BY TRUSTEES, TO AN INCORPORATED COMPANY.

CONVEYANCE *by* TRUSTEE (*a*) *in whom the* LEGAL ESTATE *was vested, and the* EQUITABLE *Owners of the Premises to a* CANAL COMPANY, *incorporated by Act of Parliament; the Clauses of the Act authorising a Purchase of Lands, being fully recited.*

THIS INDENTURE, made the day of , BETWEEN [*trustee in whom legal estate was vested*] of, &c. of the first part; [*vendor*] of, &c. of the second part; Parties.

(*a*) ON THE INCAPACITY OF TRUSTEES TO BECOME PURCHASERS.

All persons placed in the situation of trustees are incapacitated from purchasing.

It is a rule in equity which has been very strictly adhered to, that all persons placed in the situation of trustees shall be incapable of purchasing the trust property; because, in the first place, such persons might avail themselves of their character to obtain a knowledge of the property not open to others; and next, because as trustees they are bound to sell the property as *high* as possible, and, as purchasers, they would naturally wish to obtain it as *low* as possible, so that the two characters are incompatible.

Assignees. Commissioners. Solicitors to commission. Agents. Auctioneers. Persons consulted as to sale. Commissioners under an inclosure act.

Thus assignees of bankrupts, *Exparte Reynolds*, 5 Ves. 707; *Exparte Lacey*, 6 Ves. 625. 630 n. 8 Ves. 346. 10 Ves. 395; *Exparte Bage*, 4 Madd. 459. commissioners of bankrupt, *Exparte Bennet*, 10 Ves. 381; *Exparte Harrison*, 1 Buck, 17, and solicitors to a commission, cannot purchase the property of a bankrupt. *York Buildings Company* v. *Mackenzie*, 8 B. P. C. 42; *Exparte James*, 8 Ves. 337; *Exparte Churchill*, 8 Ves. 345. cit. *Exparte Bennet, ubi sup.* The same rule extends to agents, *Crowe* v. *Ballard*, 3 B. C. C. 120; *York Buildings Company* v. *Mackenzie*, 8 B. P. C. 42; *Lowther* v. *Lowther*, 13 Ves. 95; auctioneers, or persons who have been consulted as to the sale, *Exparte Hughes*, 6 Ves. 617; commissioners under an inclosure act, 41 Geo. III. c. 109, s. 2; attornies and solicitors, whilst the relation

BY TRUSTEES, TO AN INCORPORATED COMPANY.

and the company of proprietors of the canal, of the third part. WHEREAS, by indentures of lease and release, bearing date respectively the and days of , and made, or expressed to be made, between [R. G.] and [M.] his wife of the one part, and the said

recital of indentures of lease and release, whereby

Attornies. Arbitrators. Trustees for sale.

Guardians.

subsists between them and their clients, *Gibson* v. *Jeyes*, 6 Ves. 266; *Exparte James*, 8 Ves. 337; 9 Ves. 296; 13 Ves. 138; *Bellew* v. *Russell*, 1 Ball & B. 96; *Cane* v. *Lord Allen*, 2 Dow. 289; arbitrators, *Blannerhasset* v. *Day*, 2 Ball & B. 116; *Cane* v. *Lord Allen*, *ubi supra*; trustees for sale, *Whichcote* v. *Lawrence*, 3 Ves. 740; devisees for sale, *Campbell* v. *Walker*, 5 Ves. 678; guardians, as to their wards' property, *Hatch* v. *Hatch*, 9 Ves. 292: in short, all persons having a trust to perform, and on whom any reliance is placed; and whether they are alone or associated with others in the trust, *Whelpdale* v. *Cookson*, 1 Ves. sen. 9, will be prevented from availing themselves of it for their own advantage. But if they are mere nominal trustees, as trustees to preserve contingent remainders, the rule will not reach them. *Parkes* v. *White*, 11 Ves. 226. Nor will it extend to a trustee who has renounced. *Mackintosh* v. *Barber*, 1 Bing. 50.

Trustees to preserve mortgages.

The rule, however, does not extend to mortgagees, who may purchase the mortgaged property. *Webb* v. *Rorke*, 2 Sch. & Lef. 661; *Exparte Marsh*, 1 Madd. 148; and even if there is a power of sale in the mortgage deed (if the mortgagor should have become bankrupt), the mortgagee may apply to have the property sold, and may become the purchaser, *if the sale is conducted by the assignees*; *Exparte Hodgson*, 1 Gl. & Jam. 14.; but where he himself is the trustee for sale, and acts on the power inserted in the deed, then the rule will apply to him, and he cannot become the purchaser, however fair the transaction may have been. *Downes* v. *Grazebrook*, 3 Meriv. 200. And see *Exparte Ducane*, 1 Buck. 18; *Exparte Marsh*, 1 Madd. 148.

Relations to trustees.

Nor does the rule extend to purchases by relatives of a trustee or other person having a confidential character, even for the benefit of a purchaser, *Prestage* v. *Langford*, 3 Woodd. 248, n. Sug. V. &. P. 596; although the court looks upon them with dis-favour. *Coles* v. *Trecothick*, 9 Ves. 234; 1 Smith, 233; but perhaps these cases deserve reconsideration.

Purchase by third persons or trustees.

As that cannot be done in law indirectly which cannot be done directly, so no trustee can purchase by means of another person, that which he cannot purchase by himself. 9 Ves. jun. 248. *Exparte Bennet*, 10 Ves. 381; *Cooke* v. *Collingridge*, Jac. 607; and the taking a purchase in the name of a third person, has been thought fraudulent on

[*vendors*] of the other part; *And* by a fine levied in term, 18 , before his majesty's justices of the court of common pleas, at Westminster, in pursuance of a covenant for that purpose contained in the said indenture of release, the messuages or tenements, hereditaments, and pre-

premises were, in consideration of money due to mortgagor, conveyed to vendors, subject to the usual proviso.

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the face of it. *Lord Hardwicke* v. *Vernon*, 4 Ves. 411. And see *Huguelin* v. *Baseley*, 14 Ves. 289; 14 Ves. 504. And see 2 B. C. C. 410, n.

The rule applies with equal force to a purchase by a trustee which is perfectly fair, and even to a purchase by a trustee who will give as much or more than any other person for the property. *Davidson* v. *Gardner*, Sug. V. & P. 593. 7th edit.; *Dawson* v. *Massey*, 1 Ball. & B. 219; *Exparte Lacy*, 6 Ves. 627.

When the purchase is perfectly fair.

And the rule equally obtains, whether the sale is by private contract or by public auction, or before a master. *York Buildings Company* v. *Mackenzie*, 8 B. P. C. 42; *Whichcote* v. *Lawrence*, 3 Ves. 740; *Campbell* v. *Walker*, 5 Ves. 678; *Exparte James*, 8 Ves. 337; *Attorney General* v. *Lord Dudley*, Geo. Coop. 146; *Price* v. *Byrn*, 5 Ves. 681. cit.

Public auction.

These rules, however, have been to some extent, perhaps unfortunately, infringed upon by some late cases. Thus, where an estate had been offered for sale, and 23,000*l.* had been bid by a *bonâ fide* purchaser, this sale was defeated. The property was again put up three times, and the biddings were 12,000*l.*, 6,000*l.*, and 15,000*l.* The last sum was bid on behalf of an agent of the estate. The Lord Chancellor said, that as there might be a further loss on a re-sale, he would confirm the purchase; but this was done with great hesitation and reluctance. *Wren* v. *Kirton*, 1 Ves. 502. See also *Coles* v. *Trecothick*, 9 Ves. 234.

Exceptions to the rule.

We are now to consider whether a trustee can so far divest himself of his character of trustee as to be able, under any circumstances, to become a purchaser. And it seems now clear, that if the *cestui que trust*, being *sui juris*, discharges the trustee from the trust, and considers him as an indifferent person, and he has entirely shaken off his trust, although the court will look narrowly into such a transaction, yet if a purchase made under these circumstances is fair, it will be upheld. *Exparte Lacey*, 6 Ves. 627. 639 n. (*b*); but the facts must be clearly proved. 8 Ves. 348, 353. *Cane* v. *Lord Allen*, 2 Dow. 289. *Coles* v. *Trecothick*, 9 Ves. 234. *Sanderson* v. *Walker*, 13 Ves. 601. *Morse* v. *Royal*, 12 Ves. 355. *Downes* v. *Grazebrook*, 3 Meriv. 208. *Andrews* v. *Mowbray*, 1 Wils. 71.

If a trustee strips himself of his trust, he may purchase.

Thus, also, if an assignee or commissioner of bankrupts calls a meet-

Creditors' permission to purchase.

BY TRUSTEES, TO AN INCORPORATED COMPANY.

mises hereinafter described, and intended to be hereby granted and released, with the appurtenances, were, (in consideration of the sum of pounds, then due from the said [R. G.] to the said [*vendors*],) conveyed by the said [R. G.] and [M.] his wife, unto and to the use

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ing of creditors, and obtains permission of *all* the creditors to become a purchaser, the sale will be valid. See 6 Ves. 628. *Exparte Bage*, 4 Madd. 459. But the consent of a majority of creditors would not, it seems, be sufficient. See Sug. V. & P. 599. 7th edit.

Where the *cestui que trust* is not *sui juris*.

If the *cestui que trust* is not *sui juris*, the trustee must file a bill, stating the necessity for the sale of the property, and that the trustee is willing to give more than any one else, and praying to be permitted to become the purchaser of the property; and permission will then be granted to him. *Campbell* v. *Walker*, 5 Ves. 678. 13 Ves. 601. And a purchaser by a trustee may be confirmed by a *cestui que trust sui juris*. *Morse* v. *Royal*, 12 Ves. 355. *Murray* v. *Palmer*, 2 S. & L. 474.

At what time a purchase by a trustee will become good.

We must now consider whether, although a purchase would not originally have been supported under this rule, it may not become valid, from the length of time for which it is permitted to remain unimpeached. And it is quite clear as a general rule, that if the *cestui que trust* who is acquainted with the sale to his trustee, *Randal* v. *Errington*, 10 Ves. 427., does not endeavour to set it aside within a reasonable time, it will, after such time has elapsed, become valid; with this exception, that this *laches* will not apply to a body of persons, as creditors; and they will be permitted to set aside the purchase at a much more distant period after the sale, than an individual can. *Whichcote* v. *Lawrence*, 3 Ves. jun. 740. 6 Ves. 632.

There is some little difficulty in laying down a precise rule as to the length of time which must elapse before the purchase will be a safe one; and indeed it must in some measure depend upon the whole circumstances of the case. In the case of *York Buildings Company* v. *Mackenzie*, 8 B. P. C. 42. Toml. edit. the sale was set aside after *eleven* years had elapsed; and in *Watson* v. *Toone*, 6 Madd. 153, a sale was set aside after a lapse of *sixteen* years, and the Vice Chancellor (Sir J. Leach) observed, that if an* executor ignorant of the rule openly purchased the assets of his testator, with the full approbation of the parties then presently interested, the court would not in such case press the equitable rule against him, after such a length of time; but that in that

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* The observation is general, and applies to all other persons clothed with a trust.

of the said [*vendors*], their heirs and assigns for ever; but subject to a proviso in the said indenture of release contained, for the redemption of the same premises, on payment by the said [R. G.], his heirs, executors, administrators, or assigns, to the said [*vendors*], their executors,

BY TRUSTEES, TO AN INCORPORATED COMPANY.

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case the transaction was concealed and disguised in a manner that imported fraudulent intentions. And in the *Attorney General* v. *Lord Dudley*, Geo. Coop. 146. a purchase was set aside even against a subsequent purchaser, having notice of the trust, after *twenty-eight* years had elapsed.

On the other hand, in another case, although strong circumstances were proved against the fairness of the purchase, yet Sir Wm. Grant refused to set aside the purchase after eighteen years had elapsed. *Gregory* v. *Gregory*, Geo. Coop. 201; and this decision was affirmed by the Lord Chancellor, Jac. 631. And in *Price* v. *Byrn*, 5 Ves. 681, cit. Lord Alvanley refused to set aside a purchase, because the bill had been delayed twenty years. And see further on this point *Norris* v. *Le Neve*, 3 Atk. 26. *Exparte James*, 8 Ves. 337. *Hall* v. *Noyes*, 3 Ves. 748, cit.; and *Medlicot* v. *O'Donnel*, 1 Ball. & B. 156.

Deduction from the cases.

It is therefore difficult in this state of the law to fix upon any precise time when a sale, under these circumstances, will be entirely free from doubt; but it may be observed, that it would be difficult to induce the court to set aside a purchase of this nature after twenty years quiet enjoyment.

If the bargain is disadvantageous, trustee will be held to it.

A purchase by a trustee, however, will only be set aside if it be for the advantage of the *cestui que trust* so to deal with it; if it be a disadvantageous bargain, the trustee will be held to it. The property will be put up for sale at the price for which the trustee purchased it; and if a larger sum is bid, the trustee will lose the benefit of his purchase, but if not, the trustee must keep it. See *Exparte Lacey*, 6 Ves. 625. *Lister* v. *Lister*, 6 Ves. 631. *Robinson* v. *Ridley*, 6 Madd. 2.

Trustee will be allowed his expenses.

But in setting aside a purchase by a trustee, the court will allow a trustee the expenses he has been at for all reasonable improvements, although they have been very extensive. *York Buildings Company* v. *Mackenzie*, 8 B. P. C. 42, Toml. ed. *Whelpdale* v. *Cookson*, 1 Ves. sen. 9. *Exparte Hughes*, 6 Ves. 617. *Robinson* v. *Ridley*, 6 Madd. 2.

Remedy for difficulties under this rule occurring on abstracts.

The rule now under consideration not unfrequently arises on abstracts of title, when it often happens that some person clothed with the character of a trustee, has become the purchaser of a small part of the premises, as for instance, a life interest of a former owner, who had become bankrupt. In such a case, it will in general be safe for a pur-

BY TRUSTEES, TO AN INCORPORATED COMPANY.

administrators, or assigns, of the said sum of pounds, so due to them as aforesaid, with interest for the same, as in the same indenture is mentioned: AND WHEREAS the said [R. G.], in such manner as the law requires for rendering valid devises of freehold estates, duly signed and published his last will and testament in writing, bearing date the day of , and thereby devised the said messuages or tenements, hereditaments and premises, hereinafter described, and intended to be hereby granted and released, with the appurtenances, unto his wife, the said [M. G.], her heirs and assigns for ever; but subject to the payment of the said principal sum of pounds, and interest, so secured as hereinbefore is mentioned; AND WHEREAS the said [R. G.] departed this life some time in the month of without altering or revoking his said will, and on the day of , the said will was duly proved by his executors in the Prerogative Court of the Archbishop of Canterbury; AND WHEREAS, by indenture of lease and release, bearing date respectively on or about the and days of , and made, or expressed to be made, between the said [M. G.] of the first part; the said [*trustee*] of the second part; and the said [*vendors*] of the third part; the said messuages or tenements, hereditaments, and premises, hereafter described, and intended to be hereby granted and released, with the appurtenances, were, in satisfaction of the principal sum and interest then due to the said [*vendors*], on the security of the hereinbefore recited indentures of lease and release, and of the further sums in the said indenture of release now in recital, mentioned to be due from the said [M. G.] to the said [*vendor*], and also in consideration of pounds,

Will of mortgagor, whereby he conveys the equity of redemption to his wife in fee.

Death of testator, and probate of his will.

Indentures of lease and release, whereby the equity of redemption was conveyed to trustee, in trust for the vendors.

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chaser to take an indemnity, either by bond or a special deed of covenant, from the vendor, and not insist upon the property being re-sold, as he would have a right to do: but when the whole property, or a considerable part of it, is affected by a difficulty of this nature, no purchaser with notice can be advised to take the title, except under a re-sale. Where he can claim through a purchaser without notice, he would, it would seem, be protected, although he himself had notice.

BY TRUSTEES, TO AN INCORPORATED COMPANY.

paid by the said [*vendors*] to the said [M. G.], and for the nominal consideration of five shillings, conveyed by the said [M. G.] unto and to the use of the said [*trustee*], his heirs and assigns, In trust for the said [*vendors*], their heirs and assigns for ever: AND WHEREAS, by an Act of Parliament made and passed in the year of the reign of his present Majesty, King George the Fourth, intituled, "An Act for cutting a canal from the town of , in the county of , or near thereto, to that part of the river which flows by or near to the town of , in the county of , and for making a tram and rail road along the sides of the said canal," certain persons therein named and their successors were incorporated into a company, by the name and style of 'The Company of Proprietors of the Canal,' and by that name were to have perpetual succession, and a common seal, and were empowered to purchase lands, tenements, and hereditaments, to them, their successors and assigns, for the use and benefit of the said canal, and the roads and ways thereby authorized to be made, and for the several other purposes therein mentioned; *And* by the said act, the said company of proprietors were authorized to take, use, and receive conveyances and assurances of certain lands, houses, buildings, and hereditaments, mentioned and described in the schedule to the said act annexed, on giving six months notice to the owners and occupiers thereof, and first making satisfaction and compensation to the owners or occupiers thereof, in manner therein directed; *And* by the said act, bodies politic, tenants for life, and other persons, having limited interests, and all other persons whatsoever, were authorized to contract for, sell, and convey to the said company of proprietors, the lands, houses, buildings, and hereditaments, which should be set out and ascertained for the purposes of the said act; *And* by the said act, bodies politic, and tenants for life, and other persons, having limited interests, and all other persons whatsoever, were to accept and receive satisfaction for the value of the said lands, houses, buildings, and hereditaments, as should be agreed upon by and between the parties interested respectively, or any of them, or the said company of proprietors and their

Act of parliament, whereby a Canal Company is incorporated, and the clauses authorising the purchase of lands.

BY TRUSTEES, TO AN INCORPORATED COMPANY.

counsel; and in case of disagreement, the amount or value of such satisfaction was by the said act directed to be settled and ascertained by the verdict of a jury, as therein is directed. AND WHEREAS the said company of proprietors of the said canal, have contracted and agreed with the said [*vendors*], for the absolute purchase of the messuages or tenements, hereditaments and premises, hereinafter described, and intended to be hereby granted and released, with their appurtenances, with the inheritance thereof in fee simple, free from incumbrances (except the land tax) at or for the price and sum of pounds; AND WHEREAS the said messuages or tenements, hereditaments and premises, so contracted to be purchased as aforesaid, are part of the premises mentioned and described in the schedule to the hereinbefore recited act annexed; NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said company of proprietors of the canal, to the said [*vendors*] in hand well and truly paid, at or immediately before the sealing and delivering of these presents (the receipt of which said sum of pounds, they the said [*vendors*] do hereby respectively acknowledge, and of and from the same, and every part thereof, do respectively hereby acquit, release, and for ever discharge the said company of proprietors, and their assigns); *And also* in consideration of the sum of ten shillings of like lawful money by the said company of proprietors to the said [*trustee*] paid, at or immediately before the sealing and delivering of these presents, (the receipt whereof is hereby acknowledged,) *He* the said [*trustee*], at the request, and by the direction of the said [*vendors*], (testified by their respectively being parties to and sealing and delivering of these presents,) *Hath* bargained, sold, and released, and by these presents *Doth* bargain, sell, and release, *And* the said [*vendors*] *Have*, and each of them *Hath*, granted, bargained, sold, aliened, released, and confirmed, and by these presents *Do*, and each of them *Doth*, grant, bargain, sell, alien, release, and confirm unto the said company of proprietors of the canal (in their actual possession, &c. *reference to lease for*

Contract for the purchase of the premises;

and that the premises are mentioned in the schedule to the act annexed.

Testatum, in consideration of purchase-money,

trustee and persons equitably interested convey,

BY TRUSTEES, TO AN INCORPORATED COMPANY.

a year), and their assigns, ALL THAT messuage or tenement, &c., Together with, &c. (*general words*); And the reversion, &c. And all the estate, &c., TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, unto and to the use of the said company of proprietors of the canal, and their assigns for ever, for the purposes mentioned in the hereinbefore recited Act of Parliament. *And* the said [*trustee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT and declare, with and to the said company of proprietors, and their assigns, that he the said [*trustee*] (*hath not done any act to incumber;* see *ante*, 344:) *And* the said [*vendors*] *Do* hereby jointly, for themselves, their heirs, executors, and administrators, and each of them, *Doth* hereby separately for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said company of proprietors of the canal, and their assigns, in manner following, that is to say; that for and notwithstanding any act, deed, or thing, by them the said [*vendors*], or either of them, or the said [R. G.], the testator deceased, made, done, omitted, executed, committed, or knowingly or wilfully suffered to the contrary, they, the said [*trustees*] and [*vendors*], or some or one of them, now have, or hath, good right and full power to convey the said messuages or tenements, hereditaments and premises, hereby granted and released, or intended so to be, with their appurtenances, unto and to the use of the said company of proprietors, and their assigns, in manner aforesaid; *and that* it shall be lawful for the said company of proprietors, and their assigns, from time to time, at all times hereafter, peaceably and quietly to hold, possess, and enjoy, the said messuages or tenements, hereditaments and premises, hereby granted and released, or intended so to be, with their appurtenances, and to receive and take the rents, issues, and profits thereof, to and for their own use and benefit, without the lawful let, suit, interruption, claim, or demand whatsoever, of or by the said [*vendors*], or either of them, or their, or either of their heirs, or of or by any

Parcels.

Habendum to and to the use of the company of proprietors.

Covenant by trustee that he has not incumbered.

Joint and several covenants by persons equitably interested for title;

good right to convey;

for quiet enjoyment;

BY TRUSTEES, TO AN INCORPORATED COMPANY.

other person or persons whatsoever, lawfully or equitably claiming, or to claim, by, from, or under, or in trust for them or any of them, or the said [R. G.], the testator: *And that* free and clear, and freely and clearly, and absolutely acquitted, released, and for ever discharged, or otherwise, by the said [*vendors*] and each of them, and their and each of their executors, administrators, and assigns, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already or hereafter to be had, made, executed, occasioned and suffered, by the said [*vendors*], or either of them, or their or either of their heirs, or by any other person or persons lawfully or equitably claiming, or to claim, by, from, or under, or in trust for them, or any of them, or the said [R. G.] the testator (except the land-tax henceforth to become due and chargeable, for or in respect of the said messuage, tenement, hereditaments, and premises); *And further* that they, the said [*vendors*], and all and every other person, or persons, having or claiming, or who shall or may hereafter have or claim, any estate, right, title, or interest, either at law, or in equity, in, to, or out of, the said messuages or tenements, hereditaments and premises hereby granted and released, or intended so to be, or any part thereof, by, from, under, or in trust for them, or any of them, or the said [R. G.] the testator, shall and will, at all times hereafter, upon every reasonable request, and at the expense of the said company of proprietors or their assigns, make, do, and execute, or cause to be made, done and executed, all such further lawful and reasonable acts, deeds, and assurances in the law whatsoever, for the further, better, and more perfectly conveying and assuring of the said messuages or tenements, hereditaments and premises, hereby granted and released, or intended so to be, and every part thereof, with their appurtenances, unto and to the use of the said company of proprietors and their assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said company of proprietors, their assigns, or their counsel in the law, shall be reasonably devised, advised and required, so as no such further assurance or assurances contain or imply any further or other covenant or

free from incumbrances;

and for further assurance.

warranty, than against the person or persons who shall be required to make or execute the same, and his or their heirs, executors and administrators' acts and deeds, and so as the party or parties, who shall be required to make such further assurance or assurances, be not compelled or compellable for the making thereof, to go or travel from his, her, or their usual place or places of abode. IN WITNESS, &c.

BY TRUSTEES, TO AN INCORPORATED COMPANY.

CONVEYANCE *by a* TRUSTEE FOR SALE, *under a a Trust created by a Mortgage Deed, with the concurrence of the* CELLES QUE TRUST [*Executors*] *and the* MORTGAGOR, *with Recitals of the Sale of the Premises by* AUCTION; *Agreement to indemnify Purchaser against the* MISAPPLICATION *of Purchase Money.*

BY A TRUSTEE FOR SALE, AND CELLES QUE TRUST.

THIS INDENTURE, made the day of , BETWEEN [*trustee for sale*] of, &c. of the first part; [*celles que trust*] of &c. (executors named in and appointed by the last will and testament (*a*) of [Y. Y.], late of), of the second part; [*mortgagor*], (*b*) of, &c. of the third part; [*purchaser*], of, &c. of the fourth part; and [*trustee to bar dower*] of, &c. of the fifth part. WHEREAS, by an indenture of feoffment (with livery of seisin thereon indorsed), bearing date the day of , and made, or

Parties.

Recital of indentures of feoffment, whereby the premises are

(*a*) It may sometimes be permitted, for the sake of brevity, to describe the characters in which the parties act; but as a general rule, it is more advisable to let this be fully shewn by the proper recitals.

Parties.

(*b*) Although the mortgagor is not a necessary party to this conveyance, yet his concurrence should, if possible, be obtained; as it will remedy any defect in the conveyance to the trustee for sale.

Mortgagor not a necessary party.

BY A TRUSTEE FOR SALE, AND CELLES QUE TRUST.

expressed to be made, between the mayor and burgesses of the town of Nottingham of the first part; [*mortgagor*] of the said town of , of the second part; [J. S.] of, &c. of the third part; and [H.E.] town clerk of the said town of Nottingham, of the fourth part; a piece or parcel of ground, hereinafter described and intended to be hereby granted and released, with the appurtenances, was (for the considerations in the said indenture mentioned) enfeoffed and conveyed, by the said mayor and burgesses, unto the said [*mortgagor*] and his heirs, *To the use* of him the said [*mortgagor*], and his assigns, during his life, without impeachment of waste, with a limitation to the use of the said [J. S.], his executors and administrators, during the life of the said [*mortgagor*], *In trust* for him the said [*mortgagor*] and his assigns, with remainder, *To the use* of the said [*mortgagor*], his heirs and assigns for ever: AND WHEREAS, by indentures of lease and release, bearing date respectively the and days of , the release being made, or expressed to be made, between the said [*mortgagor*] of the first part; the said [J. S.] of the second part; [A. B.], of the said town of , of the third part; and [W. W.] of the fourth part, (amongst and together with other hereditaments,) the said piece or parcel of ground hereinafter described, and intended to be hereby granted and released, with the appurtenances, and also a smith's factory, and other buildings, which are now standing and being thereon, as hereinafter is mentioned, which have been lately erected and built by the said [*mortgagor*], as in the said indenture of release now in recital is expressed, were, in consideration of the sum of pounds, by the said [A. B.] to the said [*mortgagor*] paid, as in the same indenture of release is mentioned, conveyed by the said [*mortgagor*] unto, and to the use of the said [W. W.], his heirs and assigns for ever, upon the trusts in the said indenture of release now in recital declared, concerning the same, for securing to the said [A. B.], her executors, administrators, and assigns, the sum of pounds, with interest for the same, after the rate of 5*l.* for the 100*l.* by the year, on the day and in the manner therein mentioned: AND WHEREAS, by indentures of lease and release, bearing date respectively on or

conveyed to S., to uses to bar dower.

Indentures of lease and release, whereby the premises, with certain buildings built thereon, were conveyed to trustee, for securing the sum of ——— *l.* by way of mortgage.

Indentures of lease and release, whereby

about the and days of , the release being made or expressed to be made, between the said [*mortgagor*] of the first part, the said [A. B.] of the second part, the said [W. W.] of the third part, the said [*celles que trust*] (as such executrix and executor as therein and hereinbefore mentioned) of the fourth part, and [*trustee for sale*] of the fifth part, (amongst and together with other hereditaments,) the said pieces or parcels of ground hereinafter described, and intended to be hereby released, with the appurtenances, and the said smith's shop and factory, built thereon, as hereinafter is mentioned, were (in consideration of the sum of pounds to the said [A. B.], and the sum of pounds to the said [*mortgagor*], respectively paid by the said [*celles que trust*] as such executrix and executor as aforesaid, as in the said indenture of release now in recital is mentioned, and for the nominal considerations therein expressed), released by the said [W. W.] and granted, released, and confirmed by the said [*mortgagor*] unto and to the use of the said [*trustee for sale*], his heirs and assigns for ever; *but* nevertheless upon the trusts, and for the purposes, in the said indenture of release now in recital declared concerning the same, that is to say; upon trust that the said [*trustee for sale*], or his heirs, should permit the said [*mortgagor*] to occupy and enjoy the said hereditaments and premises, and receive the rents and profits thereof to and for his own use, until the day of then next; *And* in case the sum of pounds and interest thereinafter covenanted to be paid on that day should be then paid, then and in such case, upon trust that he the said [*trustee for sale*] or his heirs, should re-convey the said hereditaments and premises unto and to the use of the said [*mortgagor*], his heirs and assigns for ever, as he or they should direct or appoint, free from all incumbrances committed by him the said [*trustee for sale*] or his heirs in the mean time; *And* by the said indenture now in recital, it was declared, that in case the said sum of pounds and interest, or any part thereof, respectively, should remain unpaid on the day thereinbefore appointed for the payment thereof, and should not be paid for the space of forty days then next ensuing, then and in

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the premises are conveyed by mortgagor and first mortgagee and his trustee to trustee for sale,

upon trust to permit the mortgagor to occupy the same until the — day of ——;

and, if the mortgage-money should be then paid, to reconvey the premises to the mortgagor;

but if the mortgage-money should not be paid, the trustee should sell the premises;

BY A TRUSTEE FOR SALE, AND CELLES QUE TRUST.

such case, he the said [*trustee for sale*], or his heirs, should, as soon as conveniently might be, after the said forty days should have elapsed, or at any time thereafter, when and as he or they should think fit, sell, dispose of, and convey the said hereditaments and premises thereby granted and released, or such part thereof as should be deemed expedient, without the concurrence of or any further power or authority from the said [*mortgagor*] or his heirs, for such sum or sums of money as he or they should think reasonable and sufficient for the same, and should for the perfecting any such sale, sign, deliver, and execute all necessary deeds, conveyances and assurances, and acts and things whatsoever, as the said [*celles que trust*] and [*trustee for sale*], their executors or administrators, or any purchaser or purchasers thereof, should direct or require; *And* by the said indenture now in recital, it was further declared, that the said [*trustee for sale*] and his heirs should, out of the money to arise from any such sale, in the first place, reimburse and pay himself and themselves respectively all costs, charges, and expenses incident, or relating to such sale; and in the next place, pay unto the said [*celles que trust*], their executors, administrators or assigns, the said sum of pounds, or so much thereof as should remain unpaid, together with all interest then due and owing for the same, and should pay the surplus or residue of the said money to the said [*mortgagor*], his heirs or assigns, as he or they should direct or appoint: *And* for (*a*) facilitating any such sale of the said hereditaments and premises aforesaid, or any part thereof, it was by the said indenture now in recital declared, that the receipt or receipts of the said [*trustee for sale*] or his heirs, should be a sufficient discharge to the purchaser or purchasers of the said hereditaments and premises, or any part thereof, for so much of the said purchase money, as should be therein expressed to be received; *And* that such purchaser or purchasers should not be obliged to see to the ap-

and should, out of the monies to arise from the sale, reimburse themselves all costs and expenses;

and it was declared that the receipts of the trustees should be sufficient discharges.

Recitals.

(*a*) If this clause is inserted in the trust deed, and is recited as above, the trusts of the deed need not generally be recited; particularly if they are long: but in the above precedent it was proper to recite them, that the whole transaction might be fully explained on the face of the deed.

BY A TRUSTEE FOR SALE, AND CELLES QUE TRUST.

plication of the money by him or them paid, or be accountable for any loss, misapplication, or nonapplication thereof, or of any part thereof; *And* by the said indenture of release now in recital, it was declared that it should not be necessary for the said [*mortgagor*] or his heirs, to join in any sale or conveyance of the said hereditaments and premises, or any part thereof, in order to perfect the title of the purchaser or purchasers thereof; *And* by the said indenture now in recital, the said [*mortgagor*] covenanted with the said [*celles que trusts*], their executors, administrators and assigns, that he the said [*mortgagor*], his heirs, executors, administrators, or assigns, would pay unto the said [*celles que trust*], their executors, administrators and assigns, the sum of pounds, with interest for the same after the rate of 5*l.* for 100*l.* by the year, on the day of , then next ensuing, without any deduction or abatement whatsoever; And whereas the sum of pounds, secured by the said lastly recited indenture of release as aforesaid, was not paid at the time therein mentioned and appointed for the payment thereof; but, together with the interest which hath become due for the same since the date of the said lastly mentioned indenture, and amounting to the sum of pounds, is still due and owing, as they the said [*celles que trust*] and [*mortgagor*] do hereby respectively testify and declare: And whereas the said [*celles que trust*] having occasion for the said sum of pounds, so secured by the said lastly recited indenture as aforesaid, in order to discharge some of the debts which are still due and owing from the estate of [Y. Y.] deceased, and otherwise to execute and perform the trusts in his said will expressed and declared, did, on or about the day of , apply to and request the said [*trustee for sale*] to proceed to a sale of the hereditaments and premises comprised in the said lastly hereinbefore recited indentures, immediately after the expiration of forty days therein and hereinbefore mentioned. And whereas the said [*trustee for sale*], in compliance with such request as aforesaid, did cause the said hereditaments and premises comprised in and conveyed by the said lastly hereinbefore recited indentures as aforesaid, to be put up to sale by public auction, by Mr. at the Inn, in the said town of on the

and by the said indenture the mortgagor covenanted to pay mortgage money;

that the mortgage money was not paid at the appointed time, and that the same, and the interest thereof, are still due;

and application to the trustee for sale to proceed to sell the premises;

and that the trustee accordingly caused the same to be put up for sale by public auction in lots;

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day of , now last past, at o'clock in the afternoon, in lots, by certain written particulars of sale. AND WHEREAS the said piece or parcel of ground hereinafter described, and intended to be hereby released, with the appurtenances, and the said smith's shop and factory, and other buildings which have been erected and built thereon, were comprised in lot of the particulars of sale: AND WHEREAS the said [*purchaser*] attended at the said auction, and then and there bid for the said hereditaments and premises, comprised in lot , the sum of pounds, and being the highest bidder for the same, was declared the purchaser thereof, at that price or sum, and the said [*purchaser*] thereupon paid into the hands of the said Mr. , as the agent of the said [*trustee for sale*], the sum of pounds of lawful money of Great Britain and Ireland, by way of deposit in part of his said purchase money, and conformably to the said written particulars of sale, signed a written contract for completing such purchase; AND WHEREAS the said sum of pounds, so paid to the said Mr. hath been since paid over to the said [*trustee for sale*], as the said [*trustee for sale*] doth hereby admit and acknowledge; AND WHEREAS the said [*purchaser*] hath this day paid to the said [*trustee for sale*], the sum of pounds, of like lawful money of Great Britain and Ireland, in full, together with the deposit or sum of pounds, so paid to him as aforesaid, of the said purchase money or sum of pounds, for which the said hereditaments and premises hereinafter described, and intended to be hereby released, were so sold to him as hereinbefore is mentioned, as he the said [*trustee for sale*] doth hereby also admit and acknowledge: AND WHEREAS the said [*trustee for sale*] hath since paid over the said sums of pounds and pounds, so respectively paid to him as aforesaid, unto the said [*celles que trust*] as such executrix and executor, as aforesaid, in part satisfaction of the said principal monies and interest, which were so secured by the said hereinbefore recited indentures of the and of , as hereinbefore is mentioned, as they the said (*celles que trust*) do hereby respectively admit and acknowledge, testify and declare: AND WHEREAS, it hath been agreed, that the said piece or parcel of ground,

and that the premises were comprised in lot ——;

that purchaser attended the said sale, and bid for the said lot, and was declared the purchaser thereof;

and paid a deposit to the auctioneer, and signed an agreement for the purchase;

and that the deposit has been paid to the trustee, and that the purchaser has paid the rest of the purchase money to the trustee;

and that the trustee has paid the same over to the *celles que trust*;

Agreement to have the pre-

BY A TRUSTEE FOR SALE, AND CELLES QUE TRUST.

factory, shop and premises hereinbefore described and intended to be hereby released, with the appurtenances, should be conveyed and assured to the uses hereinafter declared concerning the same, and that the said [*trustee for sale*] should enter into the covenant hereinafter contained, in regard to the production and preservation of the said severally hereinbefore recited indentures, which are now in his possession and custody: AND WHEREAS, it is conceived that the said [*celles que trust*] are competent, as such executrix and executor, as aforesaid, to give an effectual release and discharge for the said several sums of pounds and pounds, so respectively paid to them as aforesaid; but they have nevertheless consented and agreed, at the request of the said [*purchaser*], to enter into the covenant hereinafter contained in regard to the application of the said sums, and the indemnification of the said [*purchaser*] from all claims and demands in respect thereof: AND WHEREAS the said [*mortgagor*] hath agreed to join in the conveying the said hereditaments and premises, in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the said several sums of pounds and pounds, so respectively paid by the said [*purchaser*] to the said [*trustee for sale*], as hereinbefore is mentioned, and so since paid over by him the said [*trustee for sale*] to the said [*celles que trust*], as hereinbefore is mentioned; and also in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*celles que trust*] and [*mortgagor*] paid, at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged); HE, the said [*trustee for sale*] according to his estate, right, title and interest, under or by virtue of the said hereinbefore recited indentures of the and of , and so far as he can or may, either at law or in equity, but not further or otherwise, and at the request and by the direction of the said [*celles que trust*] (testified by their respectively being parties to and executing these presents), *Hath* bargained, sold, aliened, and released, *And* by these presents *Doth*, &c.

mises conveyed;

and that trustee for sale should covenant for the production of the title deeds;

that *celles que trust* have agreed to indemnify purchaser from seeing unto the application of the money.

Testatum, in consideration of the sums paid,

trustee, *celles que trust*, and mortgagor convey,

BY A TRUSTEE FOR SALE, AND CELLES QUE TRUST.

And the said [*celles que trust*] as such executrix and executor as aforesaid, *Have*, and each of them *Hath* remised and released, and for ever quitted claim, *And* by these presents *Do*, and each of them *Doth*, &c.; *And* the said [*mortgagor*] *Hath* granted, bargained, sold, aliened, released and confirmed, *And* by these presents, &c., unto the said [*purchaser*] (*in his actual*, &c.), and to his heirs,

Parcels.

All that piece or parcel of ground, situate, lying and being in the parish of in the county of , and all the smith's shop and factory, and other buildings which are now standing and being thereon; *And* also all and singular ways, &c.; *And* the reversion, &c.;

Habendum.

And all the estate, &c.; To HAVE AND TO HOLD the said piece or parcel of ground, shop, factory, hereditaments, and all and singular other the premises hereinbefore described, and hereby released or intended so to be, and every part thereof, with their and every of their appurtenances, absolutely freed and for ever discharged of and from the principal monies and interest secured by the said hereinbefore recited indentures of the and of as aforesaid, and all claims and demands whatsoever, for or on account thereof, unto the said [*purchaser*] and his heirs; *To the uses* following, that is to say; to such uses, &c. (*uses to bar dower, see* ante, 276. *Covenant by trustee for sale with purchaser, that he has done no act to incumber, see* ante, 293. *Covenants for title by mortgagor with purchaser, see* ante, 257—273.)

Second testatum, whereby trustee for sale covenants to produce title deeds.

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, on the behalf of the said [*trustee for sale*], and in consideration of the premises, He the said [*trustee for sale*] *Doth*, &c. (*covenant to produce title deeds, with a proviso for making the covenant void, on the trustee procuring the purchaser of the larger portion of the hereditaments to enter into a similar covenant, as* ante, 92.)

Third witnessing part, whereby *celles que trust* covenant that they will apply the purchase-monies according to the trusts of the will.

AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, on the behalf of the said [*celles que trust*], that they the said [*celles que trust*] *Do* hereby jointly for themselves, their heirs, executors, and administrators, and each of them *Doth* hereby severally for himself, his heirs, executors, and

BY A TRUSTEE FOR SALE, AND CELLES QUE TRUST.

administrators, COVENANT, promise, and agree, with and to the said [*purchaser*], his heirs and assigns, That they the said [*celles que trust*], and that each of them, shall and will apply the said sum of pounds and pounds, so respectively paid to them as aforesaid, according to the trusts, and for the intents and purposes expressed and declared in the said will of the said [Y. Y.] deceased, and shall and will indemnify the said [*purchaser*], his heirs, executors, administrators, and assigns, against all actions, claims, or demands whatsoever, in which he or they may be involved by reason of the said sums having been so paid as aforesaid, or in which he or they may be involved, by reason of the misapplication or nonapplication of the said sums, or either of them, or of any matter or thing relating thereto (*a*). IN WITNESS, &c.

As to the liability to see to the application of the purchase money.

(*a*) Where the usual clause is inserted in the deed or will creating the trust, for exempting the purchaser from seeing to the application of the purchase money, all difficulty as to the payment of it is done away with; but where this clause is not inserted, the purchaser is bound in some cases to see that the money is applied according to the trusts declared. Thus where property is conveyed to a trustee to sell, and apply the monies arising from the sale to any specific purposes, a purchaser with notice of this trust must see that the money is applied according to the trusts; as if the money is not so applied, the estate will be liable in the hands of the purchaser. *Smith* v. *Guyon*, 1 B. C. C. 186. And consequently where lands are directed to be sold for the payment of legacies, or for certain specified or scheduled debts, a purchaser must see that they are satisfied, and the parties to whom the money is ultimately to be paid, should be parties to the deed, and their receipts for the several sums should be contained therein; or if they are too numerous to make this convenient, the purchaser should see that they are paid, and take receipts from them. But where there is a general charge of debts on the property, unless there are merely specialty debts, *Green* v. *Lawes*, 1 B. C. C. 207, which are not specified or scheduled, then, as it would be almost impossible for the purchaser to pay all the creditors, he need not look to the application of the money, if he pay it to the person directed to distribute it. *Humble* v. *Bill*, 1 Eq. Ca. Ab. 338, pl. 4. *Williamson* v. *Curtis*, 3 B. C. C. 96. *Barker* v. *Duke of Devonshire*, 3 Meriv. 310. And where legacies are to be paid after the payment of unscheduled debts, a purchaser will not be bound to see to the application of the purchase money, as the legacies

BY A TRUSTEE FOR SALE, AND CELLES QUE TRUST.

are not payable until the debts are paid, and the purchaser is not bound to look to the payment of the debts. Co. Litt. 200. b. n. (1). s. 12. And the purchaser is not bound to see that exactly sufficient of an estate is sold to satisfy the trusts declared, as the trustee cannot sell just what is sufficient. *Spalding* v. *Shalmer*, 1 Vern. 301. But where there is a mere power to sell, for the purpose of raising as much money as the personal estate shall be deficient in payment of debts; here the power does not arise unless there is a deficiency in the personalty, and it will be necessary therefore for the purchaser to enquire whether this is the fact, unless this necessity, as is often the case, be dispensed with in the deed or will creating the trust. *Dike* v. *Ricks*, Cro. Car. 235. W. Jones, 327.

In a case very lately reported, it has been decided that where the purchase money is to be laid out again by the trustees generally, the purchaser need not look to the application. *Doram* v. *Wiltshire*, 3 Swans. 699.

And even if the trusts are particularized, if they cannot immediately be satisfied, and require time and discretion in their execution, the purchaser will be exempted from seeing to the application of the money. *Sowersby* v. *Lacy*, 4 Madd. 142. *Dickenson* v. *Dickenson*, 3 B. C. C. 19.

Trustees joining in receipt.

According to the modern and more correct practice, the trustees are never *personally* named in the clause, as if they are not named, and any one of them should release to the others, his signature need not be obtained to the receipt. But if certain persons are named in the clause, as that the receipts of A. B. and C. D. shall be sufficient discharges, then, unless they have actually renounced the trust, they must all join in the receipt of the purchase money. Sir *W. Smith* v. *Wheeler*, 1 Ventr. 128. *Hawkins* v. *Kemp*, 3 East, 410. As to what shall be deemed renouncing, see title DISCLAIMER, and note there.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES, *and* CELLES QUE TRUST *under an Order of the* COURT OF CHANCERY (*a*) *to Purchaser to Uses, to bar Dower, with Recitals of the* ORDER *for Sale; the* SALE *under Direction of the Court, the Confirmation of the* PURCHASE, *and the Payment of the* PURCHASE MONEY *into the* BANK. UNDER AN ORDER OF THE COURT OF CHANCERY.

THIS INDENTURE, made the day of , BETWEEN [*vendors*] (*trustees*) of, &c. of the first part; [*celles que trust*] of, &c. of the second part; [*purchaser*] Parties.

(*a*) It may not be useless to mention shortly the principal matters connected with a sale under the direction of a Court of Equity. Sales under direction of a court of equity.

The first step after the order or decree for the sale of the estate is obtained, is for the plaintiff's solicitor to prepare particulars of the property to be sold. These particulars should be as correct as possible, and should explain the real value and nature of the property; and on being allowed by the master, before whom they must be laid for approval, the advertisements for sale must be prepared either by the solicitor, or the master's clerk, but more commonly by the latter, and be signed by the master, and may then be inserted in the gazette. The first advertisement is general, and fixes no time for the sale, and is merely inserted in the gazette. About three weeks or a month afterwards, a warrant is taken out to fix a time for the sale; and a second advertisement, called the *peremptory* advertisement, is prepared and inserted in the gazette, and in such other newspapers as the parties may think fit. Particulars of sale. Advertisments.

The estate is then sold, if in town, before the master or master's clerk, at the sale room, Southampton Buildings, in Chancery Lane; but if the master shall think it for the benefit of the parties, he may order it to be sold in the country, at such place or by such person as he shall think proper. This is directed by Ord. LXXV. of the new Orders, and no special application is now necessary, as formerly. The master's clerk prepares a particular of the lots to be sold, with spaces between each lot, if sold in lots, and then puts down the amount of the biddings and the names of the bidders for the different lots, or for the Sale.

UNDER AN ORDER OF THE COURT OF CHANCERY.

of, &c. of the third part; and [*trustee to bar dower*], of the fourth part. (*Recite will of testator devising the premises to trustees in fee, upon trust, to sell in order to pay debts, and for other purposes; then death of testator, and probate of his will, as* ante, p. 50). And whereas, by a decree of the High Court of Chancery, bearing date the day of , and made in a certain cause wherein the said [*celles que trust*] were plaintiffs, and the said [*trustees*] were defendants, it was ordered, that the said testator's will should be established, and the trusts thereof performed, *And* that the lands and hereditaments should be sold, with the approbation of [J. S.], Esq., one

Recital of will of testator and his death, and probate of his will.

Order of the court of chancery for the sale of the premises;

Master's report.

whole property, and the highest bidder is declared the purchaser. The master then makes his report of the purchase, which the purchaser must, at his own expense, procure. After it is filed, he must move that it be confirmed. This is a motion of course, and no notice need be given of it; and an order *nisi*, that is *unless* cause be shewn against the same in eight days after service thereof, will be granted. If no cause is shewn within the eight days, the purchaser must then move that the master's report be absolutely confirmed. This is also a motion of course, but must be made on an affidavit of the service of the order *nisi*; a form of such affidavit may be found in Turn. Prac. 503. 522. It is laid down in books of practice, that a certificate from the register that no cause has been shewn, is also necessary; but this is certainly at present unattended to; as all that is necessary is an affidavit of service of the order; and even this will not be necessary if the confirmation is assented to by all parties, and they appear by counsel. When the report is absolutely confirmed, the purchaser then moves to pay in his purchase money, and to be let into possession of the estate, and the receipt of the rents; and he will be entitled to these last from the quarter-day immediately previous to the payment of his money; he will then be entitled to a conveyance, the draft of which must be drawn by the purchaser's solicitor, and either settled by the master, if the parties insist upon it, or by a conveyancing counsel whom the master approves, and whom it would seem he has a right to nominate. *Flower* v. *Walker*, 1 Russ. 408. It is usual, however, so to word decrees, that the parties need not go before the master, "unless the parties differ," and in this case the business is transacted as in a private contract, unless the parties cannot agree, when resort is had to the master. An affidavit of the due execution of the conveyance is then made and filed, and the purchase is completed.

Order *nisi*.

Absolute order.

Payment of purchase-money.

Conveyance.

UNDER AN ORDER OF THE COURT OF CHANCERY.

of the masters of the said court, to the best purchaser or purchasers that could be procured for the same, and that all proper parties should join in the conveyance thereof, in such manner as the said master should direct, and the monies to arise therefrom were to be paid into the said bank, with the privity of the accountant general of the said court, to be placed to the credit of the said cause: AND WHEREAS, in pursuance of the said decree, the said messuages or tenements, hereditaments and premises hereinafter described, and intended to be hereby appointed and released, with the appurtenances, were put up to sale, on the day of , now last past, before the said master, at the public sale room in , in one lot, at which sale the said [*purchaser*] became, and was declared to be the highest bidder, and the purchaser thereof, at or for the price or sum of pounds; *And* the said master, by his report made in the said cause, bearing date the day of , last past, certified that the said [*purchaser*] was the purchaser of the same hereditaments and premises, at that sum; AND WHEREAS, by an order of the said court, made in the said cause, bearing date the day of , the report of the said master was confirmed *nisi*; *And* by an order of the same court, made in the said cause, bearing date the day of , the said last mentioned order was made absolute and confirmed, and the said [*purchaser*] declared the purchaser of the same hereditaments and premises, at the said sum of pounds; AND WHEREAS, in pursuance of the said last mentioned order, the said [*purchaser*], on the day of , with the approbation of the said [*trustee*], and with the privity of the accountant general of the said court, paid into the Bank of England the sum of pounds, to be there placed to the account of the accountant general of the said court, to the credit of the said cause: AND WHEREAS the said master hath perused and approved of these presents, engrossed on skins of parchment, and in testimony of his approbation of the same, hath written his name in the margin of the first skin thereof. NOW THIS INDENTURE WITNESSETH, that in obedience to the said several orders hereinbefore mentioned, and in consideration of the

that the premises were put up to sale, and that purchaser was declared the highest bidder,

and master's report thereof.

Confirmation of master's report.

Approval by the master of the conveyance.

Testatum, whereby, in consideration of the payment of the purchase

UNDER AN ORDER OF THE COURT OF CHANCERY.

sum of pounds, well and truly paid by the said [*purchaser*] into the Bank of England, on the day of , as hereinbefore is mentioned, as by the

money into the bank, as appears by the certificate of the accountant general, and the receipt of the cashier of the Bank,

certificate of the said accountant general, bearing date the day of now last past, and the receipt of one of the cashiers of the said bank thereto annexed, and therewith filed, or intended to be filed, in the registrar's office of the said court, appears; *The* payment of which said sum of pounds, in the manner aforesaid, and that the same is in full for the absolute purchase of the fee simple in possession of the messuages or tenements, hereditaments and premises hereinafter described, and intended to be hereby granted and released, the said [*trustees*] do hereby respectively admit and acknowledge, and of and from the same, and every part thereof, do hereby respectively acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, and administrators): THEY the said [*trustees*] *Have*, and each of them *Hath* bargained, sold, aliened, and released, and by these presents *Do*, and each of them *Doth* bargain, sell, alien, and release; *And* they the said (*a*) [*celles que trust*], so far as they respectively can or may, at law or in equity, but not further or otherwise, *Have*, and every of them *Hath* granted, bargained, sold, aliened, released, and confirmed; and by these presents *Do*, and every of them *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], in his actual, &c. (*reference to lease for a year*), and his heirs, ALL THAT, &c. (*parcels, and general words*); *And* the reversion, &c.; *And* all the estate, &c.: TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singular other the premises hereby granted and re-

(the payment of which sum is acknowledged,)

trustees and *celles que trust*

convey

Parcels.

Habendum to purchaser.

Celles que trust.

(*a*) It has always been the practice of conveyancers to make the *celles que trust* parties, in order that they may covenant for the title. The practice of the Court of Chancery, however, is different, and the purchaser is only entitled to a conveyance from the trustees that they have not incumbered. The purchaser, however, should stipulate that the *celles que trust* should covenant for the title; and they are all accordingly introduced in the above form, and must be struck out if they do not convey.

leased, or intended so to be, and their appurtenances, unto the said [*purchaser*] and his heirs, To such uses, &c. (*uses to bar dower, see* ante, p. 276; *covenant by trustees that they have not incumbered, see* ante, p. 344; *and by celles que trust for title,* (*b*) *as* ante, p. 335—338.) IN WITNESS, &c.

UNDER AN ORDER OF THE COURT OF CHANCERY.

To uses to bar dower.

CONVEYANCE *by* HUSBAND, WIFE, *and* TRUSTEE, *under a Trust for Sale contained in the Will of the former Husband of the Wife, the Wife and Trustee being the* DEVISEES *in trust; and Covenant to Levy a* FINE *to bar the* DOWER *of the Wife, and more effectually convey the Premises.*

BY HUSBAND, WIFE, AND TRUSTEE, THE WIFE AND TRUSTEE BEING DEVISEES IN TRUST.

THIS INDENTURE, made the day of , BETWEEN (*a*) [*husband*] of, &c. and Mary his wife, (late Mary T. the widow and relict of W. T. late of, &c.

Parties.

(*b*) In conveyances under the direction of the Court of Chancery, a person is only bound to covenant against his own acts, and those of the person immediately preceding him, and not for the acts of the last purchaser, as in an ordinary conveyance. See *Wakeman* v. *Duchess of Rutland,* 3 Ves. jun. 236. Sug. Vend. 469.

Covenants for title.

(*a*) A married woman may execute a power either appendant or in gross, and as a consequence, a power to sell, which is a power simply collateral. See *Harris* v. *Graham,* 1 Rol. Abr. 329, pl. 12. *Bayley* v. *Warburton,* 2 Com. 494. *Tomlinson* v. *Dighton,* 1 P. Wms. 149. *Travel* v. *Travel,* 3 Atk. 711. *Driver* v. *Thompson,* 4 Taunt. 294. And it is not material whether the power is given to an unmarried woman who afterwards marries, *Gibbons* v. *Moulton,* Finch. 346.; *Churchill* v. *Dibben,* 2 Eden, 252, or to a woman while she is married, who afterwards takes another husband, *Bayley* v. *Warburton, ubi supra, Burnet* v. *Mann,* 1 Ves. 157; as in both cases she may execute the power, and the concurrence of her husband is in neither case essential. Sug. Pow. 158. 4th. edit. 2 Byth. 509. It must be kept in mind, therefore, that by the will recited in this precedent, there is a trust reposed in the wife.

Married woman capable of executing powers.

BY HUSBAND, WIFE, AND TRUSTEE, THE WIFE AND TRUSTEE BEING DEVISEES IN TRUST.

Esq. deceased), and [*other trustee for sale*] of, &c. of the first part; [*purchaser*] of, &c. of the second part; and [*trustee to bar dower*] of, &c. of the third part; WHEREAS the [W. T.], in such manner as the law requires for making valid devises of freehold estates, duly signed and published his last will and testament in writing, bearing date the day of , and thereby (after devising a certain messuage at , to L. M. of, &c. in fee), gave, devised, and bequeathed all the rest and residue of his messuages, lands, tenements and hereditaments, of or to which he was at the time of his death seised, possessed, or entitled, unto his wife the said Mary B., then Mary T., and his friend the said [*other trustee for sale*], their heirs, executors, administrators, and assigns, according to the nature and quality of the premises respectively, upon trust that they the said [Mary B.] and [*other trustee*] or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, should at such time or times, and in such manner, and for such price or prices as his the said testator's said trustees for the time being should think proper, absolutely sell and dispose of the said messuages, tenements, hereditaments, and real estate, thereinbefore devised to his the said testator's trustees; *And* for promoting and facilitating such sale or sales, should enter into, make, and execute, all such contracts, covenants, agreements, conveyances, assurances, acts, deeds, matters, and things whatsoever, as should appear requisite or expedient, *And* should lay out and invest the money arising from such sale or sales, after deducting the costs thereof, in their, her, or his names or name, in some or one of the parliamentary stocks or public funds of Great Britain, or at interest upon government, or real securities in England or Wales, and alter, vary, and transpose the said stocks, funds, and securities, from time to time, as to them, her, or him shall seem advisable, and should stand possessed of the said trust monies, stocks, funds, and securities, upon and for the trusts, intents and purposes, and in the manner in the said will mentioned; *And* by the said will it was declared that the receipt or receipts of the said trustees, or the survivor of them, his heirs or assigns, should be a sufficient discharge or sufficient discharges to the purchaser or purchasers of the said messuages or tenements, heredita-

Recital of will, whereby testator (among other things) devises all his real estate to his wife and another trustee, in trust to sell the same,

and invest the proceeds, and vary the same,

and stand possessed thereof, upon the trusts therein mentioned;

and that trustees' receipts should be sufficient discharges.

ments and premises thereby devised, or any part thereof, for the sum or sums of money hereby acknowledged to be received, and that the said purchaser or purchasers thereof should not be in any way answerable or accountable for the misapplication or nonapplication thereof, or of any part thereof: AND WHEREAS the said [*testator*] departed this life on or about the day of , without altering or revoking his said will, and on the day of , the said will was duly proved by the executor thereof in the Prerogative Court of the Archbishop of : AND WHEREAS the said [M. B.], on the day of , intermarried with the said [*husband*], her present husband: AND WHEREAS, the said [*husband*] and Mary his wife, and [*other trustee*], in pursuance of the trusts for sale contained in the hereinbefore recited will of the said [*testator*], have contracted and agreed with the said [*purchaser*] for the absolute sale to him the said [*purchaser*], of the piece or parcel of land, hereditaments and premises, hereinafter mentioned, and intended to be hereby released, with the appurtenances, and the inheritance thereof in fee simple in possession, free from incumbrances, at or for the price or sum of pounds: AND WHEREAS, the said [*purchaser*] is desirous that the said piece or parcel of land, hereditaments, and premises, so contracted to be sold to him as aforesaid, should be limited to the uses, and in the manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*husband*] (M. B.) his wife, and [*other trustee*], in hand well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt of which said sum of pounds the said [*husband*] and [*other trustee*] do hereby respectively admit and acknowledge, and of and from the same and every part thereof, do hereby respectively acquit, release, and for ever discharge the said [*purchaser*], his heirs, appointees, executors, administrators, and assigns); THEY, the said [*husband*] and [M. B.] his wife, and [*other trustee*], according to their respective estates, rights, and interests, and so far as they respectively can or may, either at law or in equity, but

BY HUSBAND, WIFE, AND TRUSTEE, THE WIFE AND TRUSTEE BEING DEVISEES IN TRUST.

Death of testator, and probate of will;

marriage of wife;

Contract for purchase.

Desire of purchaser to have the premises conveyed.

Testatum, whereby, in consideration of purchase money,

husband and wife and trustee, according to their several estates,

BY HUSBAND, WIFE, AND TRUSTEE, THE WIFE AND TRUSTEE BEING DEVISEES IN TRUST.

not further or otherwise, *Have*, and every of them *Hath* bargained, sold, aliened, and released; and by these presents *Do*, and every of them *Doth*, bargain, sell, alien, and release unto the said [*purchaser*] (in his actual, &c. (*reference to lease for a year*), and his heirs, *All* that piece or parcel of meadow or pasture land, called , situate and being in the parish of , in the county of , and measuring by computation acres, roods, and bounded on the east and north by lands in the occupation of [Z. Z.] Esq.; on the west by a certain road leading to the town of ; and on the south by lands in the occupation, or belonging to [Y. Y.] farmer; *Together* with all trees, mounds, fences, hedges, ditches, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, and appurtenances whatsoever to the said piece or parcel of land, hereditaments and premises hereby released or intended so to be, belonging or in any wise appertaining; *And* the reversion, &c.; *And* all the estate, &c., To HAVE AND TO HOLD the said piece or parcel of land, hereditaments, and all and singular other the premises hereby released, or intended so to be, and every part thereof, with their appurtenances, unto the said [*purchaser*] and his heirs, to the uses and in the manner hereinafter expressed and declared of and concerning the same; *And* for the considerations aforesaid, and for barring and extinguishing all right and title of dower which the said [M. B.], the wife of the said [*husband*] hath, or can, or may have in, out of, or upon the said piece or parcel of land, hereditaments, and premises hereby released, or intended so to be, and for more effectually conveying and assuring the same piece or parcel of land, hereditaments and premises, to the uses and in the manner hereinafter mentioned, the said [*husband*], with the privity and approbation of the said [M. B.] his wife (testified by her being a party to and sealing and delivering these presents), *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*purchaser*] and his heirs, that he the said [*husband*] and [M. B.] his wife, shall and will, at the expense of the trust estate of the said [*testator*] deceased, as

convey to purchaser, Parcels.

Description of a piece of land.

General words.

Habendum to the purchaser, to the uses hereinafter mentioned.

Covenant by husband to levy a fine.

BY HUSBAND, WIFE, AND TRUSTEE, THE WIFE AND TRUSTEE BEING DEVISEES IN TRUST.

of term last, or in or as of term next, or some other subsequent term, acknowledge and levy, before his Majesty's Justices of the Court of Common Pleas, at Westminster, unto the said [*purchaser*] and his heirs, one or more fine or fines, *sur conuzance de droit come ceo*, &c., whereupon proclamations shall be had and made, according to the form of the statute in that case made and provided, and the usual course of fines for the assurance of lands and hereditaments in like cases used and accustomed, of the said piece or parcel of land, hereditaments and premises, hereby released, or intended so to be, with their and every of their appurtenances, by such names, quantities, qualities, and descriptions, as shall be sufficient to comprise the same; *And it is hereby* AGREED *and* DECLARED between and by the parties to these presents, that the bargains, sales, and releases hereinbefore contained, *And* the said fine or fines, so to be acknowledged and levied as aforesaid, *And* all other fines, conveyances, and assurances of the same piece or parcel of land, hereditaments and premises, shall operate and enure, and shall be adjudged, deemed, construed, and taken to operate and enure, to such uses, &c. (*uses to bar dower, for the benefit of the purchaser, see* ante, 276). *And* the said [*husband*], so far as relates to the acts and deeds of himself and the said [M. B.], his wife, but not further or otherwise; *And* the said [*other trustee*] so far as relates to his own acts and deeds, but not further or otherwise, *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*purchaser*], his heirs, appointees, and assigns, that they the said [*husband*] and [M. B.] his wife, and [*other trustee*] have not, nor hath not, nor hath any of them, at any time heretofore, made, done, omitted, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any such deed, matter, or thing whatsoever, whereby or by reason or means whereof, the said piece or parcel of land, hereditaments and premises, hereby released, or intended so to be, or any part thereof, are, is, can, shall, or may be in any wise impeached, charged, affected, or incumbered, in title, estate, or otherwise. IN WITNESS, &c.

Declaration that conveyance and fine, when levied, shall operate and enure to uses to bar dower, for the benefit of purchaser.

Covenant by husband, that neither he nor his wife; and by trustee that he hath not encumbered the premises.

BY TRUSTEE FOR SALE.

SPECIAL RECITALS.

CONVEYANCE *by a* TRUSTEE FOR SALE, *and Celles que Trust; with Recitals of the prior History of the Title; the Discharge of the Premises from an* ESTATE TAIL; *the Conveyance to the* TRUSTEE; *the* RELEASE *of the Premises from* PIN MONEY, *and from a* MORTGAGE *Debt.*

Parties.

THIS INDENTURE, made the day of BETWEEN [*trustee for sale*] of &c. of the first part; [*vendor*] of &c. and [*eldest son*] of &c. of the second part; [*purchaser*] of &c. of the third part; and [*trustee for purchaser*] of &c. of the fourth part. WHEREAS by indentures of lease and release, bearing date respectively on or about the day of , and made, or expressed to be made, between the said [*vendor*] of the one part, and [A.B.] of &c. of the other part, (amongst and together with other hereditaments) the messuages or tenements, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, were, (for the considerations in the said indenture of release mentioned) conveyed unto and to the use of the said [A.B.] his heirs and assigns for ever; but subject (*to a mortgage proviso, as ante*, 341). AND WHEREAS, by indentures of lease and release, bearing date respectively on or about the and days of , and made, or expressed to be made, between the said [*vendor*] of the first part; [*vendor's wife*] of the second part; [*trustee*] of the third part; and [*trustees*] of the fourth part; and by a fine *sur conuzance de droit come ceo*, &c. duly levied in pursuance of a covenant in that behalf contained in the said indenture of release now in recital, the said messuages or tenements, hereditaments and premises, hereinafter described, and intended to be hereby granted and released, with the appurtenances, were, for the considerations therein mentioned, conveyed and assured to the said [*trustee*] and his heirs, to the several uses hereinafter mentioned (that is to say); *To the use*

Recital of mortgage to A. B.

Indentures of lease and release, and fine, whereby an annuity was settled on vendor's wife, and the premises were entailed.

BY TRUSTEE FOR SALE.

and intent that the said [*vendor's wife*], or her assigns, might receive out of the same hereditaments and premises, during her life, a yearly rent or sum of pounds, with the usual powers of distress and entry, and perception of rents and profits, for recovering the same yearly rent or sum, when in arrear; and subject and without prejudice to the said yearly rent or sum of pounds, therein and hereinbefore mentioned, and the powers thereinbefore given for recovering the same, *To the use* of the said [*trustee*], his executors, administrators, and assigns, for a term of ninety-nine years from thence next ensuing, upon certain trusts, for better securing the payment of the said yearly rent or sum of pounds, as the same should become due; and after the expiration or sooner determination of the said term of ninety-nine years, and in the mean time subject thereto, and to the trusts thereof, *To the use* of the said [*vendor*] and his assigns, during his life, with a limitation to the use of the said [*trustees*] and their heirs, during the life of the said [*vendor*], *In trust* for him the said [*vendor*] and his assigns, and by the usual ways and means, to preserve the contingent remainders thereinafter limited, with remainder to the use of the first, second, and other sons of the body of the said [*vendor*] by the said [*vendor's wife*], severally and successively, in tail male, with divers remainders over. AND WHEREAS, by indentures of lease and release, bearing date respectively, &c. and being made, or expressed to be made, between [*mortgagee*] of the first part; [*vendor*] of the second part; and [*assignee*] of the third part; and indorsed on the hereinbefore recited indenture of release of the day of , (in consideration of the sum of pounds, then due from the said [*vendor*] to the said [*mortgagee*], by virtue of the said recited indentures of lease and release of &c.) and the further three several sums of pounds, pounds, and pounds, (then also due from the said [*vendor*] to the said [*mortgagee*], and secured to him by further charges (*a*) on the here-

Transfer of mortgage.

(*a*) The better mode is to recite the indentures of further charge. See INDEX.

BY TRUSTEE FOR SALE.

ditaments and premises so mortgaged to him as aforesaid), making together the sum of pounds, paid by the said [*assignee*] to the said [*mortgagee*], the said hereditaments and premises comprised in and conveyed by the said indentures of the, &c. and intended to be hereby granted and released, with their appurtenances, were conveyed by the said [*mortgagee*], unto and to the use of the said [*assignee*], his heirs and assigns for ever; but subject to such equity of redemption of the said premises as the same were then liable to, by virtue of the proviso contained in the said indenture of release of &c. AND WHEREAS, by indentures of lease and release, bearing &c. and made &c. between the said [*vendor*] of the first part; [*eldest son*] of the second part, &c. &c. and by a common recovery suffered in his Majesty's court of Common Pleas, in Westminster, in the year of the reign of his present Majesty king George the Fourth, in pursuance of an agreement for that purpose in the said indenture of release, now in recital, (amongst and together with divers other hereditaments), the said hereditaments and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, were discharged from the said estate tail therein of the said [*eldest son*], and the remainder and reversion thereon expectant or depending, and were assured and limited to the use of the said [*trustee*], his heirs and assigns for ever, upon the trusts, and to and for the intents and purposes hereinafter expressed and declared of and concerning the same in and by a certain indenture therein mentioned, meaning thereby the indenture next hereinafter recited. AND WHEREAS, by an indenture bearing date the same day of , and made &c. the said [*vendor*] and [*eldest son*] did declare, that amongst other hereditaments, the said messuages or tenements, hereditaments and premises, were limited to the use of the said [*trustee*], his heirs and assigns; and the said [*vendor*] and [*eldest son*] did, by the said indenture now in recital, direct or appoint that the said [*trustee*], his heirs and assigns, should stand and be seised thereof, *Upon trust* that he the said [*trustee*], his heirs and assigns, should (*sell the same, as ante*, 370), and should pay, apply, and dispose of the money that should arise from such sale or sales as aforesaid, in the manner in

Lease and release, and recovery, whereby premises are discharged from an estate tail, and limited to trustee, upon trusts declared by another indenture.

Declaration that trustee shall sell the premises.

BY TRUSTEE FOR SALE.

the said indenture now in recital mentioned; *And* in the said indenture now in recital it is declared, that the receipt of the said [*trustee*] should be a sufficient discharge, and that the purchaser should not be obliged to see to the application of the purchase money. AND WHEREAS by an indenture, bearing date on or about the day of , and made, or expressed to be made, between the said [*vendor*] of the first part; the said [*vendor's wife*] of the second part; and the said [*trustee*] of the third part; and by a fine *sur concessit*, levied in pursuance of a covenant for that purpose contained in the same indenture, the said messuages or tenements, hereditaments and premises, hereinafter described, and intended to be hereby granted and released, with the appurtenances, were discharged from all such right and title of pin money, jointure, and dower, as the said [*vendor's wife*] could or might otherwise have or claim, in, to, or out of the same, and were assured and limited to the use of the said [*trustee*], his heirs and assigns; but nevertheless, upon the trusts declared in the secondly hereinbefore recited indenture of the day of . AND WHEREAS, by indenture of lease and release, bearing date &c. and made &c. the said [*assignee*] being well satisfied that the remainder of the hereditaments and premises comprised in the said mortgage, were an ample security for the said principal money and interest due thereon, conveyed, (amongst and together with other hereditaments comprised in the said mortgage) the said hereditaments and premises hereinafter described, and intended to be hereby granted and released, unto and to the use of the said [*trustee*], his heirs and assigns for ever, freed from the said mortgage debt and interest, upon the trusts, nevertheless, and to and for the intents and purposes mentioned, expressed, and declared in and by the secondly hereinbefore recited indenture of the day of . AND WHEREAS the said [*trustee*], in pursuance of the trust for sale reposed in him by the secondly hereinbefore recited indenture of the day of , hath contracted and agreed with the said [*purchaser*] for the absolute sale of the hereditaments and premises hereinafter described, and intended to be hereby granted and released,

Indenture and fine, whereby the premises are discharged from annuity to wife.

Indenture whereby assignee discharges the premises from his debt.

Contract for purchase.

BY TRUSTEE FOR SALE.

with their appurtenances, and the inheritance thereof in fee simple in possession, free from incumbrances, (except the land tax) at and for the price or sum of pounds.

Testatum.

NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, *And* in consideration of

Consideration.

&c. (*consideration and receipt, as* ante, p. 298), HE, the

Trustee, vendor, and eldest son, convey,

said [*trustee*], in pursuance of the trusts for sale reposed in him by the said secondly hereinbefore recited indenture of the day of , and according to his estate, &c. *Hath* granted, bargained, sold, *And* by these presents *Doth* grant, bargain, and sell; *And* the said [*vendor*] and [*eldest son*] *Have*, and each of them *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Do*, and each of them *Doth* grant, bargain, sell, alien, release, and confirm, unto the said [*purchaser*], (in his actual, &c. *reference to lease for a year*),

Parcels.

and his heirs, ALL THAT, &c. [*parcels*], *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO

Habendum to the purchaser, to uses to bar dower.

HOLD the said messuages or tenements, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*] and his heirs, to such uses, &c. (*uses to bar dower, see ante*, 276; *covenant by trustee, that he has not incumbered, as ante*, 291).

Covenants.

And the said [*vendor*] and [*eldest son*] do hereby jointly, for themselves, their heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that for and notwithstanding any act, deed, matter or thing whatsoever, by them the said [*vendor*] and [*eldest son*], or either of them, they the said [*trustee*], [*vendor*], and [*eldest son*], or some or one of them, now have or hath, in themselves or himself, good right, &c. (*as ante*, 344; *and thus with the other covenants for title, as ante*, 344). IN WITNESS, &c.

CONVEYANCE *by* ASSIGNEES (*a*) *of a* BANKRUPT, *and by the* BANKRUPT, *to a Purchaser, to Uses to bar Dower.* ASSIGNEES AND BANKRUPT.

THIS INDENTURE, made the day of , BETWEEN [*assignees*] of, &c. of the first part; [*bankrupt*] of, &c. of the second part; [*purchaser*] of, &c. of the third part; and [*trustee for purchaser*] of, &c. of the fourth part. (*b*) WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , and made, or expressed to be made, between the right honourable John Lord Viscount [A.] of the Parties. Recitals.

(*a*) The bankrupt is not a necessary party to the conveyance, but is generally made to join, to supersede the necessity of proving the commission. And by the 6 Geo. IV. c. 16, s. 78, the Lord Chancellor may, on petition, order the bankrupt to join in the conveyance, if such bankrupt shall not try the validity of the commission; or if there shall have been a verdict at law establishing its validity; and if he shall not execute such conveyance within the time directed by the order, then he and all persons claiming under him shall be estopped from objecting to the validity of the conveyance, and all his estate in the property shall be as effectually barred by such order, as if such conveyance had been executed by him. But it has lately been held, that under this clause the bankrupt cannot be ordered to join in the conveyance, although he has been nonsuited in one action to supersede the commission; *Exparte Thomas*, 2 Glyn. and Jam. 278; and non-prossed in a second, *Exparte Thomas*, 1 Mont. & Mc Ar. 64. But if a bankrupt refuse to deliver up possession of land which the assignees had contracted to sell, he will be ordered so to do, within fourteen days service of the order, though a petition to supersede the commission was pending, *Exparte Hargraves*, 2 Gl. & Jam. 59; and if the bankrupt refuse he will be committed, *Exparte Hawkins*, 1 Mont. & Mc Ar. 115. Bankrupt joining.

(*b*) The prior history of the title should generally be recited. History of the title.

ASSIGNESS AND BANKRUPT.

first part; [A.B.] (therein described) of the second part; and the said [*bankrupt*] of, &c. of the third part; the messuages or tenements, lands, hereditaments and premises hereafter described, and intended to be hereby granted and released, with the appurtenances, were (for the considerations in the said indenture of release mentioned) conveyed by the said John Lord Viscount [A.], to and to the use of the said [*bankrupt*], his heirs and assigns for ever. (*c*) AND WHEREAS, on or about the day of , a commission of bankrupt, under the great seal of Great Britain, was issued against the said [*bankrupt*], and he was thereupon found bankrupt, and the said [*assignees*] were duly chosen assignees of his estate and effects: AND WHEREAS by an indenture of bargain and sale, inrolled in the High Court of Chancery, bearing date on or about the day of , and made, or expressed to be made, between [W. R.], [G. B.], and [J. R.], therein respectively described, (the major part of the commissioners named and appointed in the said commission of bankrupt), of the one part; and the said [*assignees*] of, &c. of the other part; the said [W. R.], [G. B.], and [J. R.], in execution of the said commission, and by force of the statutes therein mentioned, did order, grant, bargain, and sell unto the said [*assignees*], their heirs and assigns, ALL the messuages or tenements, lands, and hereditaments whatsoever, of him the said [*bankrupt*], with their appurtenances, To HOLD the same unto and to the use of the said [*assignees*] and their heirs, according to the said [*bankrupt's*] right and interest therein, subject to the incumbrances (if any such there should be), as the same were legally charged with or liable to; *In trust*, nevertheless, for the benefit and advantage of the said [*assignees*], and all other the creditors of the said [*bankrupt*], who had then come in and sought relief, or should thereafter in due time come in and seek relief, by virtue of the said commission, or any renewed commission, against the said [*bankrupt*], and duly

The commission of bankruptcy.

Choice of assignees.

Bargain and sale by the commissioners to the assignees.

(*c*) It was at one time doubted, but it is now fully settled, that assignees must make the same title as any other vendors. *Macdonald* v. *Hawson*, 12 Ves. 277.

prove and ascertain their respective debts under the same, according to the directions and limitations of the said statutes: *And* as to the overplus (if any such there should be), after payment of such debts and the charges of the said commission, *In trust* for the said [*bankrupt*], his heirs and assigns, according to the said statutes, and the true intent and meaning thereof: AND WHEREAS (*d*) the said [*purchaser*] hath contracted and agreed with the said [*assigneees*] for the absolute purchase of the said messuages or tenements, hereditaments and premises hereinafter described, and intended to be hereby granted and released, and the inheritance thereof in fee simple, with the appurtenances, free from incumbrances, at or for the price or sum of pounds: AND WHEREAS the said [*bankrupt*] hath, at the request of the said [*assignees*], agreed to join in the conveyance of the said hereditaments, in the manner hereafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, *And* in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*assignees*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of pounds, they the said [*assignees*] do hereby respectively admit and acknowledge, and of and from the same, and every part thereof, do hereby respectively acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators, and assigns;) *And also* in consideration of ten shillings of

ASSIGNEES AND BANKRUPT.

Contract for purchase.

That bankrupt has agreed to join in conveyance.

Testatum,

Consideration.

(*d*) If the premises were sold by public auction, see *ante*, 371; and if they have been put up to auction but not sold, it will be proper to recite this fact, as every thing which tends to shew the fairness of the transaction should always be recited. This recital may be as follows:

Auction.

"AND WHEREAS the said messuages or tenements, lands, hereditaments, and premises, have been repeatedly put up for sale by public auction, but without effect. AND WHEREAS the said [*assignees*] are desirous of bringing the affairs of the said bankrupt to a conclusion, and of finally arranging the same for the benefit of all parties."

ASSIGNEES AND BANKRUPT.

like lawful money, by the said [*purchaser*] to the said [*bankrupt*] at the same time paid (the receipt whereof is hereby acknowledged, THEY the said [*assigness*], with the privity and approbation of the said [*bankrupt*], and according to their estate, right, title and interest, and so far as they can or may, at law or in equity, *Have*, and each of them *Hath*, bargained, sold, and released, *And* by these presents *Do*, and each of them *Doth*, &c. *And* the said [*bankrupt*] *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], (in his actual, &c. (*reference to lease for a year*), and his heirs, ALL, &c. (*parcels*), *And* the reversion, &c. *And all* the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*], his heirs and assigns, to such uses, &c. (*usual uses to bar dower*, ante, p. 276; *covenant by the assignees against incumbrances, as* ante, p. 291); *And* the said [*bankrupt*] doth hereby, for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that for and notwithstanding any act, deed, matter, or thing whatsoever, by them the said [*assignees*] and [*bankrupt*], or any of them, made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, they the said [*assignees*] and [*bankrupt*] are, or some or one of them are or is, at the time of the sealing and delivering these presents, lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said messuages or tenements, hereditaments and premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, for a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee simple, without any manner of condition, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter or thing whatsoever, to alter, charge, defeat, incumber, revoke, or make void the same estate;

Assignees and bankrupt convey.

Parcels.

Habendum to purchaser, to uses to bar dower.

Covenants for title by bankrupt, that he or the assignees are seised in fee.

And that for and notwithstanding any act, deed, matter or thing, as aforesaid, they the said [*assignees*] and [*bankrupt*] now have, or some or one of them now hath, in themselves or himself, good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey the said messuages or tenements, lands, hereditaments and premises hereby granted and released, or intended so to be, with the appurtenances, to the uses, and in the manner aforesaid, according to the true intent and meaning of these presents: *And* that the said messuages or tenements, lands, hereditaments and premises hereby granted and released, or intended so to be, with the appurtenances, shall and may, from time to time, and at all times hereafter, remain and be to the uses hereinbefore declared of and concerning the same, and the rents, issues, and profits thereof, and of every part thereof, be received and taken accordingly, without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of or by them the said [*assignees*] and [*bankrupt*], or their heirs, or of, from, or by any person or persons whomsoever lawfully or equitably claiming, or to claim, by, from, through, or under, or in trust, for them, or any of them; *And that*, free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the [*assigness*] and [*bankrupt*], or some or one of them, or their, or some or one of their executors or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights and titles of dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rent, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures and re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already or hereafter to be had and made, executed, occasioned, and suffered, by the said [*assignees*] and [*bankrupt*], or by any of them, or by their or any of their heirs,

ASSIGNEES AND BANKRUPT.

Good right to convey;

and free from incumbrances;

ASSIGNEES AND BANKRUPT.

and for further assurance.

or any person or persons lawfully or equitably claiming, or to claim, by, from, or under, or in trust, for them or any of them: *And further*, that they the said [*asisgnees*] and [*bankrupt*], their and every of their heirs, and all or every other person or persons having or claiming, or who shall or may hereafter have or claim any estate, right, title, interest, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuages or tenements, lands, hereditaments and premises hereby granted and released, or intended so to be, with their appurtenances, or any of them, or any part thereof, by, from, or under, or in trust for them the said [*assignees*] and [*bankrupt*], or any of them, or their or any of their heirs, shall and will, from time to time, and at all times hereafter, &c. (*further assurance, as* ante, p. 262). (*a*) IN WITNESS, &c.

ASSIGNEES OF INSOLVENT DEBTOR.

CONVEYANCE *by* TRUSTEE *in whom the* LEGAL ESTATE *was vested, the* ASSIGNEES *of an Insolvent* DEBTOR, *and by the* INSOLVENT DEBTOR *himself, to* PURCHASER, *to Uses to bar* DOWER.

THIS INDENTURE, made the day of ,

Parties.

BETWEEN [*trustee*] of, &c, of the first part; [*assignees*] of, &c. of the second part; [*insolvent debtor*] (*b*) of, &c. of the third part; [*purchaser*] of, &c. of the fourth part;

Recital.

and [*trustee*] of, &c. of the fifth part. (*Recite the history*

Title deeds.

(*a*) If the title deeds cannot be delivered, the assignees must give attested copies of them, and covenant to produce the originals. 2 Rose, 215. But they are entitled to have their covenant confined to the period of their continuance as assignees.

Insolvent debtor a party.

(*b*) There is no power given in the late or any other Insolvent Debtors' Act, for compelling the insolvent to be a party. But he is generally made a party, in order that he may covenant for title. His covenant however, generally speaking, will be of very little service.

of the title of the premises, according to the circumstances). AND WHEREAS, under or by virtue of the provisions of a certain act of parliament, made and passed (*c*) in the year of the reign of King George the Fourth, entituled "an Act for the Relief of Insolvent Debtors in England," the the said [*debtor*] was, on his petition, discharged from custody, and was declared to be entitled to the benefit of the said act; AND WHEREAS, by an indenture bearing date on or about the day of , and made, or expressed to be made, between the said [*debtor*] of the one part, and [A. B.] (the provisional assignee of insolvent debtors under the provisions of the said act) of the other part; the said [*debtor*], by force of the said act, did convey unto the said [A. B.], his successor (*d*) and assigns, all his real estate, including therein the messuages or tenements, hereditaments and premises hereafter described, and intended to be hereby granted and released; *To hold* the same unto him and his heirs, according to the said [*debtor's*] right and interest therein; but subject to the incumbrances then affecting the same; *In trust*, nevertheless, for the benefit and advantage of the several persons mentioned as the creditors of the said [*debtor*], in his schedule, filed in the Court of Insolvent Debtors, and against whose demands the said [*debtor*] had by an order of the said court been discharged, and upon and for the other trusts, intents, and purposes in the said indenture expressed: AND WHEREAS, by an indenture bearing date on or about the day of , and made, or expressed to be made, between the said [A. B.], of the one part, and the said [*assignees*] of the other part; the said [A. B.], by force of the said act, did order and convey unto the said [*assignees*] and their heirs, ALL the real

ASSIGNEES OF INSOLVENT DEBTOR.

Insolvent debtor's act.

Indenture, whereby the premises were conveyed to provisional assignee.

Indenture whereby premises are conveyed to assignees.

(*c*) This form will serve for a conveyance made under any Insolvent Debtors' Act. They are now all consolidated by 7 Geo. IV. c. 57.

(*d*) By the 7 Geo. IV. c. 57, s. 16, following 3 Geo. IV. c. 123, s. 1, it is enacted, that all property which vests in the provisional assignee by virtue of the prisoner's conveyance, shall not, in case of his death or removal, remain in him, or in his heirs or personal representatives, but should vest in his successor in office.

Provisional assignee.

ASSIGNEES OF INSOLVENT DEBTOR.

estate of the said [*debtor*], (including therein the messuages or tenements, hereditaments and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances,) to hold the same unto them and their heirs, according to the said [*debtor's*] right and interest therein, (but subject to the incumbrances then affecting the same,) *In trust*, nevertheless, for the benefit and advantage of the several persons mentioned as the creditors of the said [*debtor*], in his said schedule filed in the said court, and against whose demands the said [*debtor*] had by an order of the said court been discharged, and upon and for the other trusts, intents, and purposes in the said act expressed: AND WHEREAS (*a*) the said [*assignees*], in obedience to the provisions of the said act, did cause the said hereditaments and premises hereinafter described, and intended to be hereby granted and released, to be put up to sale by public auction by Mr. [A.], at the Inn, in the said town of , on the day of , now last past, at o'clock in the afternoon, in one lot, by certain written particulars of sale; AND WHEREAS the said [*purchaser*] attended at the said auction, and then and there bid for the same hereditaments and premises the sum of pounds; *And* being the highest bidder for the same, was declared the purchaser thereof, at that price or sum; *And* the said [*purchaser*] thereupon paid into the hands of the said Mr. [A.], as the agent to the said [*assignees*], the sum of pounds, of lawful money of Great Britain and Ireland, by way of deposit, and in part of his said purchase money, and signed, conformably to the said written particulars of sale, a written contract for completing such purchase; AND

That premises were put up for sale by auction;

and that purchaser attended and bid for the same.

Payment of deposit,

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7 G. 4. c. 57. directs that the real estate shall be sold by public auction.

(*a*) By the 7 Geo. IV. c. 57, s. 20, the assignees must, within six months after the conveyance to them by the provisional assignee, or within such other time as the court shall direct, sell the prisoner's real estate by public auction, in such manner, and in such place or places, as shall thirty days before be approved, in writing under their hands, by the major part in value of the creditors of the prisoner, expressly summoned for that purpose by a notice in the London Gazette, and in some daily newspaper.

ASSIGNEES OF INSOLVENT DEBTOR.

WHEREAS the said sum of pounds, so paid to Mr. [A.] as aforesaid, hath been since paid over to the said [*assignees*]; AND WHEREAS the said [*purchaser*] hath since paid unto the said [*assignees*] the further sum of pounds, which together with the said sum of pounds so paid as aforesaid, amounts to the said sum of pounds, the receipt of which said several sums of pounds, and pounds, the said [*assignees*] do hereby admit and acknowledge: AND WHEREAS the said [*purchaser*] is desirous of having the said hereditaments and premises conveyed to the uses, and in the manner hereinafter mentioned. AND WHEREAS the said [*trustee*] hath agreed, at the request of the said [*assignees*] and the said [*debtor*], to join in the conveyance of the said hereditaments and premises, in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, *And* in consideration, &c. (*of purchase money, and receipt*, as ante, p. 293), *And also* in consideration of the sum of ten shillings of like lawful money, by the said [*purchaser*] to each of them the said [*trustee*] and [*debtor*], at the same time paid, (the receipt whereof is hereby respectively acknowledged), HE the said [*trustee*], at the request and by the direction of the said [*assignees*], (testified by their being parties to, and sealing and delivering these presents,) and according to his estate, right, title, and interest, and so far as he can or may at law or in equity, but not further or otherwise, *Hath* bargained, sold, and released, *And* by these presents *Doth* bargain, sell, and release, *And* THEY the said [*assignees*], with the privity and approbation of the said [*bankrupt*], and according to their estate, right, title, and interest, and so far as they can or may at law or in equity, *Have*, and each of them *Hath*, bargained, sold, and released, *And* by these presents *Do*, and each of them *Doth*, bargain, sell, and release; *And* the said [*bankrupt*] *Hath*, &c. and by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], (in his actual, &c. *reference to lease for a year*) and his heirs, ALL THOSE, &c. (*parcels, &c.*), *And* the reversion, &c. *And all* the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singu-

and the residue of the purchase money.

Desire of the purchaser to have the premises conveyed.

And that trustee has agreed to join.

Testatum.

In consideration of purchase money, trustee, assignees, and debtor convey.

Habendum to purchaser to uses to bar dower.

ASSIGNEES OF INSOLVENT DEBTOR.

lar other the premises, with their appurtenances, unto the said [*purchaser*], his heirs and assigns, to such uses (*uses to bar dower,* see ante, p. 276. *Covenant by trustee and assignee against incumbrances,* as ante, p. 385. *Covenant by debtor for title, as to the acts of himself, trustee, and assignees,* as ante, p. 394.) IN WITNESS, &c.

Covenants by reference.

BY TRUSTEES, UNDER POWERS OF SALE AND EXCHANGE.

CONVEYANCE *by* TRUSTEES *under Powers of* SALE *and* (*a*) EXCHANGE, *contained in a Marriage Settlement, where One of the Trustees had died, and the Powers have* SURVIVED *to the other, with the Consent of the* TENANT FOR LIFE, *subject to the Payment of Two* RENTS, *One of which was also charged on other Premises, but which it was agreed should be paid entirely by the* PURCHASER, *who should* INDEMNIFY *the Tenant for Life from the Payment thereof.*

Parties.

THIS INDENTURE, &c. BETWEEN [*trustee*] of the first part; [*tenant for life*] of the second part; [*purchaser*] of the third part; and [*trustee for purchaser to bar dower*] of the fourth part. WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , the release being made, or expressed to be made, between the said [*tenant for life*] of the first part; [*intended wife*] of, &c. of the second part; [A. B.] of, &c. and [*trustee*], of the

Recital of marriage settlement, whereby the premises were (together with other premises) limited and assured,

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Tenant for life may purchase.

(*a*) A doubt at one time existed in the profession, whether a tenant for life could himself purchase under a power of this nature; but it is now decided that he may. *Howard* v. *Ducane,* 1 Turn. 81.

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third part; [Z. Z.] and [Y. Y.], (therein respectively described,) of the fourth part; (being the settlement made previous to, and in consideration of the marriage then intended and since solemnized, between the said [*tenant for life*] and [*wife*]), the manor, messuages or tenements, hereditaments and premises therein described, and amongst which are included the hereditaments and premises hereinafter described, with their and every of their appurtenances, were limited, conveyed, and assured, to such uses, upon and for such trusts, intents, and purposes, and under and subject to such provisoes, declarations, and agreements, as by and in the said indenture of release are expressed and contained, and hereinafter in part mentioned, that is to say; *To the use* of the said [Z. Z.] and [Y. Y.], their executors, administrators, and assigns, for the term of five hundred years, without impeachment of waste, to commence and be computed from the day of the date of the said indenture of release, *Upon such trusts* as in the said indenture of release are expressed, and subject to the said term of five hundred years, *To the use* of the said [*tenant for life*], and his assigns, during his life, with a limitation *To the use* of the said [A. B.] and [*trustee*], their heirs and assigns, during the life of the said [*tenant for life*], *Upon trust* to preserve the contingent uses and estates thereinafter limited from being destroyed, with a limitation *To the use* of the said [Z. Z.] and [Y. Y.], their executors, administrators, and assigns, for the term of one thousand years, to commence and be computed from the day of the decease of the said [*tenant for life*], without impeachment of waste, *Upon such trusts* as are in the said indenture of release declared, concerning the same, with divers remainders over; *And* in the said indenture of release is contained a power enabling the said [A. B.] and [*trustee*], or the survivor of them, and the executors or administrators of such survivor, at any time or times thereafter, (at the request and by the direction of the said [*tenant for life*], during his life, to be testified by some writing or writings under his hand and seal), to dispose of and convey, either by way of absolute sale, or in exchange for, or in lieu of other manors, messuages, or tenements, lands, hereditaments and premises, to be situate

to the use of Z. Z. and Y. Y. for 500 years;

remainder to tenant for life, for his life;

remainder to A. B. and trustee to preserve contingent remainders.

to the use of Z. Z. and Y. Y. for 1000 years.

and in the said indenture is contained a power of sale and exchange.

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in England or Wales, all or any part or parts of the manors, messuages, or tenements, hereditaments and premises thereby granted and released, and the inheritance thereof in fee simple, unto any person or persons whomsoever, for any price or prices in money, or in exchange for such other manors, messuages, tenements, hereditaments and premises, as to them the said [A. B.] and [*trustee*], or the survivor of them, or the executors or administrators of such survivor, should seem reasonable; *And* for the purpose of effecting such sales, exchanges, dispositions, and conveyances, *It* is declared by the said indenture of release, that it should be lawful for the said [A. B.] and [*trustee*], and the survivor of them, and the executors or administrators of such survivor, (at the request and by the direction of the said [*tenant for life*], so testified as aforesaid), by any deed or deeds, instrument or instruments in writing, sealed and delivered by them or him, in the presence of, and attested by two or more credible witnesses, absolutely to revoke, determine, and make void, all and every or any of the uses, trusts, powers, and provisoes thereinbefore limited, expressed, and declared, of and concerning the hereditaments and premises which should be so agreed to be sold or exchanged, or any part thereof, and by the same or any other deed or deeds, instrument or instruments in writing, to limit, declare, direct, and appoint any use or uses, estate or estates, trust or trusts, of the said hereditaments and premises, the uses and trusts of which should be so revoked, which it should be thought necessary or expedient to limit, declare, direct, or appoint, in order to effectuate any such sale, exchange, disposition, or conveyance as aforesaid: *And also* that upon payment of the money to arise by any sale or sales of the said hereditaments and premises, or any part thereof, or of any money to be paid for equality of exchange, or any part thereof, it should be lawful for the said [A. B.] and [*trustee*], and the survivor of them, and the executors and administrators of such survivor, to sign and give receipts for the money for which the same should be so sold, or so to be paid for equality of exchange, as aforesaid; *And* that such receipts should be good and sufficient discharges to the person or persons paying the same respectively, for the

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money for which the same should be so given, or for so much thereof as in such receipt or receipts should be acknowledged to be received; *And* that the person or persons paying the same respectively, and taking such receipt or receipts for the same respectively, his, her, or their executors, administrators, or assigns, should not afterwards be answerable or accountable for any loss, misapplication, or nonapplication of the said monies, or be in anywise obliged to see to the application thereof, or of any part thereof respectively; *And* it was by the said indenture of release declared, that the said [A. B.] and [*trustee*], or the survivor of them, or the heirs, executors, or administrators of such survivor, should settle and assure, or cause to be settled or assured, as well the manors, messuages or tenements, lands, hereditaments, and premises, which should be purchased as therein directed, by the monies to arise by such sale or sales as aforesaid, as also all such manors, messuages, lands, tenements, and hereditaments, which should be received in exchange, as therein and hereinbefore mentioned, to the same uses, upon the same trusts, and for the same intents and purposes, and with, under, and subject to the same powers, provisoes, declarations, and agreements, as are in and by the said indenture of release limited, expressed, declared, and contained, of and concerning the hereditaments and premises which should be so sold, or conveyed in exchange, as aforesaid, or such of them as should be then subsisting undetermined, and capable of taking effect, or as near thereto as the deaths of persons or other intervening circumstances would admit of. AND WHEREAS the said [A. B.] departed this life some time in the year , and thereupon and thereby the powers of disposition and conveyance, and of revocation and new appointment, by the said hereinbefore recited indenture of release given and limited to the said [A. B.] and [*trustee*] jointly, as hereinbefore is mentioned, became, and the same are, now vested in the said [*trustee*] alone, by survivorship. AND WHEREAS the said [*trustee*] hath, at the request and by the direction of the said [*tenant for life*], contracted and agreed with the said [*purchaser*] for the absolute sale to him the said [*purchaser*] of the messuages or tenements, hereditaments, and

Death of A. B., and that the powers of sale and exchange, &c. have survived to trustee.

Contract by trustee for the sale of premises to purchaser,

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premises, hereinafter particularly described, and intended to be hereby appointed and released, and the inheritance thereof in fee simple in possession, at and for the price or sum of pounds, free from incumbrances (save and except a yearly rent charge called a salt-rent of pounds, and another yearly rent called a provision rent of pounds, both payable to the right honourable John Earl of , and his heirs, and now charged as well on the other lands and hereditaments of the said [*tenant for life*], situate in the counties of and , as on the messuages or tenements, lands, hereditaments and premises, hereinafter particularly described, and intended to be hereby appointed, granted, and released); *And* it was agreed upon the contract for the said sale, that the messuages or tenements, hereditaments and premises, hereinafter mentioned, and intended to be hereby appointed, granted, and released, should for ever continue and remain solely charged with the payment of the entirety of the said two several yearly rents and payments, to the said Earl of , and his heirs; and that the said [*tenant for life*], his heirs, executors, and administrators, and all his and their real and personal estate, should be for ever acquitted and discharged, and saved harmless and indemnified (*a*) by the said [*purchaser*], his heirs, executors, administrators, and assigns, of and from the payment of the said two yearly rents or payments, and every part thereof, and of and from all costs, damages, and expenses whatsoever, for, or by reason, or means of the nonpayment thereof, or any part thereof, by the said [*purchaser*], his heirs, executors, administrators, and assigns. NOW THEREFORE THIS INDENTURE WITNESSETH, that in consideration of the sum of pounds of lawful money of Great Britain and Ireland, at or before the sealing and delivering of these presents,

subject to two rents, one of which was charged on other premises,

and that it was agreed that the premises now conveyed shall be subject to the entire payment of both rents, and that tenant for life should be indemnified from the payment thereof.

First testatum, whereby, in consideration of the purchase money,

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Stamp.

(*a*) This indemnity should be effected by a separate deed. See the proper form under the title INDEMNITY. An additional stamp of 1*l.* 15*s.* would be payable for this indemnity if it were inserted in this deed. The indemnity should be made by the grant of a perpetual indemnity rent of equal amount to the rents, to be charged on the purchased estate.

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by the said [*purchaser*] to the said [*trustee*] in hand well and truly paid, at the request and by the direction of the said [*tenant for life*] (testified by his being a party to and sealing and delivering these presents), to be by the said [*trustee*], his executors, administrators, and assigns, applied and disposed of in the manner by the said indenture of release directed for the application of the money to arise from the sale or sales of such of the estates in the same indenture comprized, as should be sold, in pursuance and exercise of the power for that purpose therein contained, (the receipt of which said sum of pounds, the said [*trustee and tenant for life*] *Do*, and each of them *Doth* hereby admit and acknowledge, and of and from the same, and every part thereof, *Do*, and each of them *Doth* hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators, and assigns, and *Do*, and each of them *Doth* declare the same to be the full consideration agreed to be paid by the said [*purchaser*], for the absolute purchase of the said messuages or tenements, hereditaments, and premises) ; *And* he the said [*trustee*], pursuant to, and by virtue, and in exercise and execution of the power or authority in the said [*trustee*], for this purpose vested by the said hereinbefore recited indenture of release, and all other powers and authorities enabling him in this behalf, with the consent and approbation, and by the direction of the said [*tenant for life*], (testified by his being a party to, and sealing and delivering these presents,) *Doth*, by this present deed or instrument in writing, by him the said [*trustee*] signed, sealed, and delivered, in the presence of, and attested by the two credible persons whose names are intended to be hereupon indorsed, as witnesses attesting the signing, sealing, and delivery of these presents, by the said [*trustee*], revoke, determine, and make void, all and every the uses, trusts, powers, provisions, and declarations, in and by the said hereinbefore recited indenture of release limited, expressed, and declared, of and concerning the said messuages or tenements, hereditaments and premises hereinafter described, and intended to be hereby appointed and released, so far as the same uses, trusts, powers, provisoes and declarations, or any of them, relate to or affect

trustee, by the direction of tenant for life, revokes the uses of the settlement, as far as they relate to the premises to be conveyed.

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the said messuages or tenements, hereditaments and premises hereinafter described, and hereby appointed and released, and their appurtenances, and every of them, and every part thereof. AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the said sum of pounds, so paid by the said [*purchaser*], as hereinbefore is mentioned, *And* pursuant to, and by force and virtue, and in exercise and execution of the power or authority in the said [*trustee*] for this purpose vested by the said hereinbefore recited indenture of release, and all other powers and authorities enabling him, in this respect, and with the consent and approbation, and by the direction of the said [*tenant for life*], (testified as aforesaid,) *He*, the said [*trustee*], by this deed or instrument in writing, so by him signed, sealed, and delivered, and intended to be attested as hereinbefore expressed, *Doth* limit, declare, direct, and appoint, that the messuages or tenements, hereditaments and premises hereinafter mentioned, and intended to be hereinafter appointed and released, with their appurtenances, shall from henceforth go, remain, and be, to the uses, and upon and for the trusts, intents, and purposes hereinafter mentioned, expressed, and declared, of and concerning the same, but subject to the payment of the two yearly rents hereinbefore mentioned: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the sum of pounds, by the said [*purchaser*] so paid, as hereinbefore is mentioned, and in consideration of the sum of ten shillings of like lawful money, to the said [*tenant for life*] by the said [*purchaser*] paid, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), and for further assuring the said messuages or tenements, lands, hereditaments and premises, to the said [*purchaser*], his heirs and assigns, to such uses as hereinafter is mentioned, *He* the said [*trustee*], at such request, and by such direction, and with such consent and approbation of the said [*tenant for life*], and so testified as aforesaid, *And* according to the estate, right, title, and interest of him the said [*trustee*] in the said messuages or tenements, lands, hereditaments and premises, and so far as he the said [*trustee*] can or may at law or in equity; *And* he the said [*tenant*

Second witnessing part, whereby trustee appoints the premises to the uses hereinafter mentioned.

Third witnessing part, whereby trustee and tenant for life, according to their respective estates, convey the premises to the purchaser.

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for life], according to his estate, right, title, and interest, and so far as he can or may at law or in equity, *Have* and each of them *Hath* (*a*) granted, bargained, sold, aliened, released, and confirmed, and by these presents *Do*, and each of them *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], (in his actual possession, &c.,) and his heirs, ALL, &c. (*parcels and general words*); *And* the reversion, &c. *And* all the estate, &c. of them the said [*trustee and tenant for life*], in, to, out of, and upon the same messuages or tenements, lands, hereditaments, and premises, and every part thereof, TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby appointed and granted, and released, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*], his heirs and assigns, (subject to the several rents and payments of pounds and pounds), *To* the uses, and upon and for the trusts, intents, and purposes hereinafter mentioned, expressed, and declared of and concerning the same; AND IT IS HEREBY AGREED AND DECLARED between the parties to these presents, that the limitation and appointment, and grants, releases, and confirmations hereinbefore contained, and hereby respectively made as hereinbefore is mentioned, shall operate and enure to such uses, &c. (*Uses to bar dower, see ante*, 276.) *And* the said [*trustee*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT and declare with and to the said [*purchaser*], his heirs and assigns, that he the said [*trustee*] hath not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof he the said [*trustee*] is in anywise prevented or hindered from exercising in manner hereinbefore mentioned, the power of revocation, determination and making void, limitation, declaration, di-

Habendum to purchaser, to uses to bar dower.

Covenant by trustee that the power has not been incumbered.

(*a*) If words of qualification are used, trustees can make no proper objection to conveying by the word *grant*. See 1 Byth. 424. 452. Grant.

BY TRUSTEES, UNDER POWERS OF SALE AND EXCHANGE.

rection, or appointment, so in him by the said hereinbefore recited indentures of release and settlement vested, as hereinbefore is mentioned, or whereby, or by reason or means whereof the said messuages or tenements, hereditaments, and premises, hereby appointed and released, or intended so to be, or any part thereof, are, is, can, shall, or may be impeached, charged, or incumbered in title, estate, or otherwise howsoever; *And* the said [*tenant for life*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree to and with the said [*purchaser*], his heirs, appointees, and assigns, in manner following (that is to say); *That* for and notwithstanding any act, deed, matter or thing whatsoever, by him the said [*tenant for life*], or any of his ancestors, made, done, omitted, committed, or executed, or knowingly or willingly permitted or suffered to the contrary, the power or authority hereby exercised by the said [*trustee*], as hereinbefore is mentioned, is well and effectually created by the said hereinbefore recited indenture of release, and the same is at the time of the sealing and delivery of these presents in full force, and is in nowise suspended, extinguished, weakened, or become void. *And that* for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said [*trustee and tenant for life*], at the time of the sealing and delivery of these presents, have in themselves respectively good right, full power, and absolute authority to dispose of, convey, direct, declare, limit, appoint, grant, bargain, sell, alien, release, and confirm the said messuages or tenements, lands, hereditaments, and premises, hereby appointed, granted, and released as aforesaid, or intended so to be, with the appurtenances, To the use and in the manner hereinbefore mentioned, according to the true intent and meaning of these presents; *And that* the said messuages or tenements, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, shall from time to time, and at all times hereafter, remain and be to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore limited, expressed, and contained of and concerning the same, and shall and may be peaceably and quietly held and enjoyed,

Covenant by tenant for life for title;

that the power is good;

good right to convey;

and for quiet enjoyment;

BY TRUSTEES, UNDER POWERS OF SALE AND EXCHANGE.

and the rents, issues, and profits thereof, and of every part thereof, received and taken accordingly, without the lawful let, suit, trouble, denial, eviction, interruption, claim, and demand whatsoever, of or by them the said [*trustee and tenant for life*], or either of them, their or either of their heirs, or by any other person or persons, lawfully or equitably claiming by, from, or under them, or in trust for them, or either of them, or by, from, or under any of the ancestors of him the said [*tenant for life*]; *And that* free and clear &c. (*see ante*, 261.) and incumbrances whatsoever, either already had, made, done, executed, occasioned, or suffered, or hereafter to be had, made, done, executed, occasioned, or suffered by the said [*tenant for life*], or his heirs, or by any other person or persons lawfully claiming, or to claim by, from, or under, or in trust for him, them, or any of them; But subject to the payment of the said two yearly rents or payments of pounds and pounds. (*And for further assurance, as* ante, 261.) IN WITNESS, &c.

and free from incumbrances.

BY TRUSTEES, UNDER A PRIVATE ACT OF PARLIAMENT.

CONVEYANCE *of Freeholds by Trustees under a* POWER *given to them by a* PRIVATE ACT OF PARLIAMENT, *to Purchaser, to Uses to bar Dower; with* RECITALS *of the Clauses of the Act relating to the Power and Payment of the* CONSIDERATION MONEY *into the* BANK, *in the Name of the Accountant General of the Court of Chancery.*

Parties.

THIS INDENTURE, made the day of , in the year of our Lord, 18 ; BETWEEN [*trustees*] of, &c. of the first part; [A. B.] of, &c. of the second part; [*purchaser*] of, &c. of the third part; and [*trustee to bar dower*] of, &c. of the fourth part. WHEREAS [X. Y.] late of, &c. deceased, was at the time of making his will, hereinafter recited, and thenceforth to the time of his decease, seised of or well entitled to the several pieces or parcels of ground and hereditaments hereinafter mentioned, and intended to be hereby released; and being so seised or entitled, duly made and published his last will and testament in writing, bearing date on or about the day of , and signed and attested as by the law is required for rendering valid devises of freehold estates, and thereby gave, devised, and bequeathed all his manors, messuages, lands, tenements and hereditaments, of what kind soever, or wheresoever, with the rights, members, and appurtenances thereto belonging, including therein the lands and hereditaments hereinafter described, and intended to be hereby released, with the appurtenances, unto [W. D.] of, &c. and [A. E.] of, &c. and their heirs, upon the trusts, and under and subject to the powers, provisoes, and limitations therein expressed and declared: *And* by the said will it was provided, that if the said [*trustees*] thereby appointed, or either of them, or their or either of their heirs, executors, administrators, or assigns, should happen to die, or be desirous of being dis-

Recital of seisin of X. Y. to the premises,

and that he made his will, and thereby devised his real estates to trustees, upon trusts therein declared.

Power to change trustees.

charged of and from the trusts thereby reposed in them respectively, then and in that case, and so often as the same should happen, it should be lawful for the said [A. B.], during his life, and after his decease, for the persons in the said will mentioned, by any deed or deeds, writing or writings, to be by him or them respectively sealed and delivered in the presence of, and attested by two or more credible witnesses, from time to time, to appoint any person or persons to be a trustee or trustees, in the place of the trustee or trustees so dying or desiring to be discharged: AND the said [*testator*] thereby appointed his sister [E. B.], who afterwards departed this life in his life time, and the said [W. D.] and [A. E.], executrix and executors of his said will. (*Death of testator, and proof of will*; *as* ante, p. 58.) AND WHEREAS the said [W. D.] and [A. E.] were desirous of being discharged from the trusts of the said will; AND WHEREAS, by an indenture bearing date the day of , and made, or expressed to be made, between the said [A. B.] of the one part, and the said [*trustees*] of the other part; the said [A. B.] did, in pursuance of the power so given to him by the said hereinbefore recited will, duly appoint the said [*trustees*] to be the trustees of the said hereinbefore recited will, in the room and stead of the said [W. D.] and [A. E.]: AND WHEREAS, by indenture of lease and release, bearing date respectively on or about the, &c. the release being made, or expressed to be made, between the said [W. D.] and [A. E.] of the first part; the said [A. B.] of the second part; and the said [*trustees*] of the third part; the said [W. D.] and [A. E.] did, according to their respective estates, rights, and interests, bargain, sell, and release the said manors, messuages, farms, lands, tenements, and hereditaments, which were given and devised to them the said [W. D.] and [A. E.] by the said hereinbefore recited will of the said [*testator*], with their appurtenances, unto and to the use of the said [*trustees*], their heirs and assigns for ever; upon the trusts, and under and subject to the powers, provisoes, and limitations expressed and declared of and concerning the same, in and by the said hereinbefore recited will of the said [*testator*]: AND WHEREAS,

BY TRUSTEES, UNDER A PRIVATE ACT OF PARLIAMENT.

Appointment of executrix, who died in testator's life-time, and of executors, who proved the will.

Indentures of lease and release, whereby trustees of will convey premises to trustees of this indenture.

Private act, whereby pre-

BY TRUSTEES, UNDER A PRIVATE ACT OF PARLIAMENT.

by an act of parliament, made and passed in the year of his present majesty King George the Fourth, entituled, (*set forth the title of the Act,*) IT WAS ENACTED (amongst other things), that from and immediately after the passing of that act, all and singular the messuages or tenements therein particularly mentioned, including (amongst other hereditaments) the pieces or parcels of ground, and hereditaments hereinafter described, and intended to be hereby released, with the appurtenances, should be freed and discharged, and absolutely acquitted and exonerated, of and from all and every the uses, trusts, estates, limitations, conditions, powers, provisoes, and declarations, which, in and by the said hereinbefore recited will of the said [*testator*], were limited, created, and declared, of and concerning the same; *And* so freed, discharged, acquitted and exonerated, should be vested in and settled upon and to the use of them the said [*trustees*], their heirs and assigns for ever; but, nevertheless, upon and for the trusts, intents, and purposes thereinafter expressed and declared of and concerning the same; that is to say; *Upon trust,* that they the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor, did and should, as soon as conveniently might be, with the consent and approbation of the said [A. B.], during his life, to be signified by some writing under his hand and seal, and after his decease, at their or his own discretion, absolutely sell and dispose of all and singular the said messuages or tenements, lands, hereditaments and premises, and every part thereof, with their appurtenances, either together or in parcels, and either by public auction or private contract, unto any person or persons whomsoever, who should be willing to become the purchaser or purchasers thereof, at the best price or prices, and for the most money that could at the time of such sale or sales be reasonably had or obtained for the same; *And upon this further trust,* that they they said [*trustees*], or the survivor of them, did and should (upon payment of the purchase money or monies for which the hereditaments thereby made saleable, or any part thereof, should be sold, into the bank, in manner thereinafter decribed) convey and assure the messuages or tenements, lands, heredita-

mises were discharged from the trusts of the will, and vested in trustees of this indenture,

upon trust to sell, with the consent of A. B.,

BY TRUSTEES, UNDER A PRIVATE ACT OF PARLIAMENT.

ments and premises, so for the time being sold or assured, with their respective appurtenances, unto the purchaser or purchasers thereof, and his, her, or their heirs and assigns, absolutely, or to such uses, and in such manner as such purchaser or purchasers, or his, her, or their heirs or assigns should direct and appoint: AND IT WAS FURTHER ENACTED, That all and every the sum or sums of money, which should arise from any sale or sales to be made in pursuance of the said act, should be paid by the person or persons to or with whom such sale or sales should be made, into the Bank of England, in the name and with the privity of the accountant-general (*a*) of the Court of Chancery, to be placed to his account there, "*exparte* the purchaser or purchasers of the estates of the said [*testator*] the testator;" pursuant to the method prescribed by the act of the twelfth year of king George the First, chapter thirty-two, and the general rules and orders of the said court, without fee or reward, and according to the act of the twelfth year of king George the Second, chapter twenty-four, and that the (*b*) certificate or certificates to be given by the

and that the purchase money should be paid into the Bank, in the name of the Accountant General of the Court of Chancery, pursuant to the 12 Geo. 1, c. 32, and the 12 Geo. 3, c. 24;

and that the certificate of

(*a*) By an order, dated the 26th of May 1725, the masters of the Court of Chancery were directed by the Lords Commissioners, to deliver to, and deposit in, the Bank of England, the monies, bonds, tallies, and other effects, of the suitors of the Court, which had been, or thereafter should be, under the direction of the court; and by another order, dated the 4th of November following, the Lord Chancellor confirmed the first order, with further directions as to the forms of paying and transferring any of such monies, and as to the mode in which the accounts should be kept. The 12 Geo. I. c. 32, after reciting these orders, confirmed them, and appointed a person to be called "the Accountant General of the Court of Chancery," to do all such things relating to the suitors' money and effects, as are by the said orders directed to be done by the masters and ushers of the court. By the 5th and 6th sections, transferrable securities are to be taken in the Accountant-General's name, and to be vested in his successors. As to the practice of the Accountant-General's office, see 1 Turn. & Ven. Prac. 240. 1 Newl. Prac. 14. 12 Geo. I. c. 32, s. 20. 12 Geo. II. c. 24, s. 3. & 54 Geo. III. c. 14.

Orders of the Court of Chancery respecting the effects of suitors.

The 12 Geo. 1, c. 32, appoints an accountant-general.

(*b*) For each sum of money to be received by the bank, the Account-

Practice as to paying money

BY TRUSTEES, UNDER A PRIVATE ACT OF PARLIAMENT.

the accountant general and cashier of the bank, to be filed in the report-office, shall be a good discharge.

said accountant-general, together with the receipt or receipts of the cashier of the Bank of England, to be thereunto annexed, and therewith filed in the Report-office of the said Court of Chancery, of the payment into the Bank of England, by such purchaser or purchasers, of his, her, or their purchase money, or purchase monies, should from time to time, and at all times thereafter, be and be deemed a good and sufficient discharge, and good and sufficient discharges, to such purchaser or purchasers, and to his, her, or their heirs, executors, administrators, and assigns, for so much of the said purchase money, or purchase monies, for which such certificate or certificates, receipt or receipts, should be respectively given; and that after the filing of such certificate or certificates, and receipt or receipts, such purchaser or purchasers, and his, her, or their respective heirs, executors, administrators, and assigns, should be, and was, and were, thereby absolutely acquitted and discharged of and from the same monies and every part thereof, and should not be answerable or accountable for any loss, misapplication, or nonapplication thereof, or be bound to see to the application thereof.

That the trustees have contracted, with the assent of A B., with purchaser for the sale of the premises:

AND WHEREAS the said [*trustees*], as such trustees as aforesaid, in pursuance and performance of the trusts reposed in them by the aforesaid act of parliament, have, with the consent of the said [A. B.], testified by this present writing under his hand and seal, contracted and agreed with the said [*purchaser*], for the absolute sale to him of the fee simple and inheritance in possession, of and in the said pieces or parcels of ground and hereditaments hereinafter mentioned, and intended to be hereby released,

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into the Bank in the name of the Accountant General.

ant-General signs a certificate, mentioning the order, report, or act of parliament, under the authority of which the person named in the certificate is to pay the sum therein specified, and directing it to be placed to his account, as Accountant-General, to the credit of the particular cause or account mentioned. When the party paying in the money, or his solicitor, brings into the Accountant-General's office a certificate from the bank of such payment having been made, the Accountant-General signs another certificate of such payment, and annexes it to the bank certificate, for the purpose of being entered in the report office. See 1 Newl. Prac. 16.

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with the appurtenances, at or for the price or sum of pounds, free from incumbrances. AND WHEREAS it hath been agreed that the said price or sum of pounds, shall be paid into the Bank of England, pursuant to the said act. AND WHEREAS the said [*purchaser*] has requested that the said pieces or parcels of ground and hereditaments hereinafter mentioned, and intended to be hereby released, may be conveyed to the uses, and in manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in further execution of the aforesaid trusts created by the said hereinbefore recited act of parliament, and in exercise and execution of the powers and authorities therein contained, and in pursuance of the aforesaid agreement, and in consideration of the said sum of pounds of lawful money of Great Britain and Ireland, by the said [*purchaser*], at or before the sealing and delivery of these presents, well and truly paid into the Bank of England, in the name and with the privity of the said accountant-general of the said Court of Chancery, to be placed to his account there, "*exparte* the purchaser or purchasers of the estates of the said [*testator*] the testator," pursuant (*a*) to the method prescribed by the said act of the twelfth George the First, chapter thirty-two, and the general rules and orders of the said court, as appears by the certificate of the said accountant-general, together with the receipt of the cashier of the Bank of England, thereunto annexed and therewith filed in the Report-office of the said Court of Chancery, pursuant to the directions of the said hereinbefore recited act of parliament of the said year of the reign of his present Majesty; *And* also in consideration of the sum of ten shillings of like

that purchase-money shall be paid into bank.

Desire of purchaser to have the premises conveyed.

Testatum, in exercise of the powers given by private act, and in consideration of ——*l.* paid into the Bank of England, pursuant to the 12 Geo. 1, c. 32.

and of nominal consideration,

(*a*) If an estate is sold under a decree of a court of equity, if any difficulty arises in the title or otherwise, the purchaser may petition for leave to pay the purchase money into the bank, and that it shall not be taken out without notice to him. *Binks* v. *Lord Rokeby*, 2 Madd. 239. *Barker* v. *Harpe*, Geo. Coop. 32. But where the directions are given in a private act of parliament as to the disposition of the purchase money, the Court of Chancery will not interfere, as it will not unnecessarily incumber itself with the charge of money. *Isaac* v. *Gompertz*, 1 Ves. jun. 44. *Anon.* 1 Ves. jun. 56.

Rule as to payment of money into court.

BY TRUSTEES, UNDER A PRIVATE ACT OF PARLIAMENT.

Trustees, with consent of A. B. convey to purchaser.

lawful money, by the said [*purchaser*] to the said [*trustees*] paid, at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged); *They* the said [*trustees*], as such trustees as aforesaid, with the consent and approbation of the said [A. B.], (testified by his being a party to, and signing, sealing, and delivering these presents,) *Have*, and each of them *Hath* (*c*)bargained, sold, aliened and released, *And* by these presents *Do*, and each of them *Doth*, bargain, sell, alien, and release unto the said [*purchaser*], in his actual possession now being, by virtue, &c. (*reference to lease for a year*, see Vol. I. p. 655), and to his heirs and assigns, ALL, &c. (*describe the parcels*), *Together with*, &c. (*general words as in* 1. Byth. p. 656), *And* the reversion, &c. *And* all the estate, &c. (See 1. Byth. p. 656), TO HAVE AND TO HOLD the said pieces or parcels of ground, hereditaments, and all and singular other the premises hereinbefore described, and hereby released, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*] and his heirs, *To such uses*, &c. (*uses to bar dower*, ante, p. 276): AND each of them the said [*trustees*], for himself, his heirs, executors, and administrators, so far as relates to his own acts and deeds only, and not further or otherwise, doth hereby COVENANT, promise, and declare, with and to the said [*purchaser*], his heirs and assigns, that they the said [*trustees*] have not, nor hath either of them, at any time heretofore, made, done, or committed, or wittingly or willingly permitted or suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby or by reason or means whereof, the said pieces or parcels of ground, hereditaments and premises hereby released, or intended so to be, or any part thereof, are, is, can, shall, or may be charged, impeached, incumbered, or affected in title, estate, or otherwise howsoever. IN WITNESS, &c.

Habendum to purchaser, to uses to bar dower.

Covenant by the trustees against incumbrances.

"Grant."

(*c*) Trustees may safely convey by the word *grant*. See 1 Byth. 424. 452. This expression, however, is generally omitted when they convey, and is quite immaterial.

CONVEYANCE *of an* ESTATE FOR LIFE, *by a* TENANT FOR LIFE, *and Covenant by the Father of* REMAINDER-MAN *in Fee, (an* INFANT,*) that Remainder-Man shall, when he attains the Age of Twenty-one,* CONVEY *the Premises to the Purchaser in Fee; the Purchase Money being invested in the mean time, for the Benefit of all the Parties, and for the Payment of an* ANNUITY, *charged upon the Premises.*

BY TENANT FOR LIFE, WITH PROVISION FOR THE CONVEYANCE OF THE REMAINDER BY AN INFANT.

THIS INDENTURE, made the day of , BETWEEN [*tenant for life*] (*a*) of &c., of the first part; [*covenantor*] of &c. [*the father of the remainder-man*], of the second part; [*purchaser*] of &c. of the third part; and [*trustees of the purchase money*] of &c. of the fourth part: WHEREAS [A. B.] did, in such manner as the law requires for rendering valid devises of freehold estates, duly sign and publish his last will and testament, in writing, bearing date on or about the day of , and thereby, after charging all his freehold messuages, lands, tenements, hereditaments, and real estate whatsoever, with the payment of all his debts, funeral expenses, and pecuniary legacies, in case the residue of his personal estate and effects should not be sufficient for that purpose, *He,* the said [*testator*] did give and bequeath unto his servant, [W. H.] and his assigns, for and during the term of his

Parties.

Recital of will of A. B., whereby he charged all his real estate with debts and legacies,

and bequeathed an annuity, with usual powers, to his servant, W. H.,

(*a*) If a tenant for life, having a power in gross, conveys all his estate by lease and release, as it is an innocent conveyance, the power given to him will remain unaffected. *Phillon's case,* Hard. 412. Sug. Pow. 64, 4th edit. The tenant for life may still exercise such powers as are to take effect after the determination of his life estate; and it is now determined that a power appendant or appurtenant will not be destroyed by a conveyance of the whole estate. 2 Byth. 312.

Powers in tenant for life.

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natural life, one annuity or yearly rent of pounds, to be issuing out of all his freehold messuages, lands, tenements, hereditaments, and real estate, thereby devised and to be paid and payable, as in the said will is mentioned, with the usual powers of distress and entry, and detention of the possession, and perception of the rents, issues, and profits of the same premises, for enabling the said [W. H.] to recover and compel payment of the said annuity when in arrear, and subject and charged as therein and hereinbefore is mentioned, the said [*testator*] did give and devise all his said messuages, lands, tenements, hereditaments, and real estate whatsoever, and including the hereditaments and premises hereinafter particularly described, unto the said [*tenant for life*], and his assigns, for and during the term of his natural life, without impeachment of waste; and from and after the decease of the said [*tenant for life*], unto [C. G.], the son of the said [*covenantor*] party hereto, and to his heirs and assigns for ever: *And* the said testator appointed the said and executors of his said will; AND WHEREAS the said testator departed this life on or about the day of , without having altered or revoked his said will, *And* the said and soon after the decease of the said [*testator*], duly proved his said will in the prerogative court of the Archbishop of ; AND WHEREAS the said [*tenant for life*] upon the decease of the said [*testator*], entered upon, and has since continued in the possession of the real estate, devised by the will of the said [*testator*] as aforesaid; AND WHEREAS the said [C. G.] the son, to whom and to whose heirs the real estates of the said [*testator*] are by the said will divided in remainder expectant on the decease of the said [*tenant for life*], as hereinbefore is mentioned, is still an infant under the age of twenty-one years, to wit, of the age of fifteen years; AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*tenant for life*] and [*covenantor*], party hereto, for the purchase of the said messuages or tenements, lands, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, free from all incumbrances, at or for the price or sum of pounds; AND

and so charged, he devised the premises to tenant for life for his life;

remainder to C. G. in fee.

Death of testator, and probate of his will.

Entry of tenant for life upon the premises.

That remainder-man in fee is still an infant.

Contract for purchase,

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WHEREAS upon the treaty of the said purchase, it was agreed between and by the parties hereto, that the said sum of pounds, should be laid out in the purchase of three per cent. consolidated bank annuities, in the names of the said [*trustees*]; *And* that the said [*trustees*] should stand possessed of the said sum of pounds, so to be laid out as aforesaid, upon and for the trusts, intents, and purposes hereinafter declared of and concerning the same; AND WHEREAS the said [*purchaser*] hath this day, with the privity and approbation of the said [*vendor*] and [*covenantor*], party hereto, laid out the said sum of pounds in the purchase of the sum of pounds, three per cent. consolidated bank annuities, in the names of the said [*trustees*], as they the said [*trustees*] do hereby admit and acknowledge. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement on the part of the said [*tenant for life*], and in consideration of the said sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*], laid out in the purchase of pounds, three per cent. consolidated bank annuities, as hereinbefore is mentioned, (which they the said [*tenant for life*] and [*covenantor*], party hereto, do, and each of them doth hereby admit and acknowledge, and of and from the same, and every part thereof do, and each of them doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators and assigns), HE the said [*tenant for life*] *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*] (in his actual possession, &c. *reference to lease for a year*) and his heirs, *All*, &c. (*parcels*), *Together* with, &c. (*general words*), (*a*) *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or in-

and that the purchase-money should be laid out in the 3 per cents.; and that trustee should stand possessed thereof.

Investment of purchase-money.

Testatum, whereby, in consideration of the purchase money, so laid out, and acknowledgement thereof by tenant for life and covenantor,

the tenant for life conveys his estate to purchaser.

Habendum for and during the life of tenant for life.

(*a*) The clause of "All the reversion," is of course improper in the the conveyance of a mere life estate. "All the reversion."

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tended so to be, with their and every of their appurtenances, unto the said [*purchaser*], his heirs and assigns, during the term of the natural life of him the said [*tenant for life*]; *And* the said [*tenant for life*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that for and notwithstanding any act, deed, matter, or thing whatsoever made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, he the said [*tenant for life*] now(*b*) hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey the said messuages or tenements, lands, hereditaments and premises, hereby granted and released, or intended so to be, with the appurtenances thereunto belonging, unto and to the use of the said [*purchaser*], his heirs and assigns, during the life of the said [*tenant for life*], in manner aforesaid, according to the true intent and meaning of these presents; *And that* it shall and may be lawful for the said [*purchaser*], his heirs and assigns, from time to time, and at all times during the life of the said [*tenant for life*], peaceably and quietly to enter into, hold, occupy, possess, and enjoy the said messuages or tenements, lands, hereditaments and premises, hereby granted and released, or intended so to be, with their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of or by him the said [*tenant for life*], or his assigns, or of, from, or by any other person or persons whomsoever, lawfully or equitably claiming or to claim by, from, or under, or in trust for him, them, or any of them, or the said testator: *And that* free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged or otherwise by the said [*tenant for life*], his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and

Covenants for title by tenant for life:

good right to convey;

and for quiet enjoyment of purchaser.

free from incumbrances;

Seisin in fee.

(*b*) The first covenant for seisin in fee must of course be omitted.

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against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, and all rights and title of dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the King's majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had and made, executed, occasioned, and suffered, or hereafter to be had, made, executed, occasioned, and suffered, by the said [*tenant for life*], or his assigns, or by any other person or persons lawfully or equitably claiming, or to claim, by, from, or under, or in trust for him, them, or any of them, or by, from, or under or in trust for the said [*testator*], or by his or their own acts, deeds, means, default, or procurement: *And* further, that the said [*tenant for life*], and all and every other person or persons having or claiming, or who shall or may hereafter have or claim, any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for him the said [*tenant for life*] and his heirs, or from or under the said [*testator*], shall and will, from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges of the said [*purchaser*], his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, conveying, and and assuring of the said messuages or tenements, lands, hereditaments and premises hereby granted or released, or intended so to be, and every part thereof, with their appurtenances, unto and to the use of the said [*purchaser*], his

and for further assurance.

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heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*purchaser*], his heirs or assigns, or his or their counsel in the law, shall be reasonably devised, advised, and required; so as no such further assurance or assurances contain or imply any further or other covenant or warranty than against the person or persons who shall be required to make such further assurance or assurances, and such person or persons be not compelled, nor compellable, for the making thereof, to go or travel from his, her, or their usual place or respective places of abode: *And* in consideration of the premises, and in pursuance and performance of the said agreement, on the part of the said [*covenantor*], party hereto, HE the said [*covenantor*], party hereto, doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, *That* the said [C. G] the son, shall and will, within six months next after he shall attain the age of twenty-one years, or in case the said [C. G.] the son shall depart this life before he shall have attained the said age of twenty-one years, that the heirs at law of the said [C. G.] the son, shall, within six months after the decease of the said [C. G.] the son, at the proper costs and charges in the law of the said [*purchaser*], his heirs or assigns, well and effectually, and to the satisfaction and approbation of the said [*purchaser*], his heirs and assigns, convey and assure the messuages or tenements, lands, hereditaments, and premises hereby released, or intended so to be, with the appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, or as he or they shall direct or appoint; *And* that in the mean time, he the said [*purchaser*], his heirs and assigns, shall and may, peaceably and quietly, enter into, hold, occupy, possess, and enjoy the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, with the appurtenances, and have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, denial, claim, demand, interruption or eviction whatsoever, of or by him the said [C. G.] the son,

Covenant by the father of the remainderman in fee, that neither he nor his heirs will convey the premises to the purchaser;

and for the quiet enjoyment of the purchaser in the mean time;

his heirs and assigns, or any other person or persons whomsoever, lawfully or equitably claiming, or to claim, by, from, or under, or in trust, for him, them, or any of them, or the said [*testator*]; *And* further that he the said [*covenantor*], party hereto, his heirs, executors, or administrators, shall from time to time, and at all times, save, defend, keep harmless and indemnified, the said [*purchaser*], his heirs, executors, administrators, and assigns, of, from, and against all losses, charges, damages, and expenses, which he the said [*purchaser*], his heirs, executors, administrators or assigns may sustain, expend, incur, or be put unto, by reason or on account of any let, interruption, eviction, trouble, action, suit, claim or demand, or upon, for, or in respect of the said messuages or tenements, lands, hereditaments and premises hereby released, or intended so to be, or any part thereof, by the said [C. G.] the son, his heirs or assigns, or for or by reason, or upon account of his or their not executing the conveyance, which he the said [*covenantor*], party hereto, hath hereinbefore covenanted that the said [C. G.] the son, his heirs or assigns, shall execute, of the said messuages or tenements, lands, hereditaments and premises, unto and to the use of the said [*purchaser*], his heirs and assigns, as hereinbefore is mentioned; or for, or by reason, or on account of any matter, cause, or thing, in anywise relating thereto. AND THIS INDENTURE ALSO WITNESSETH, and it is hereby agreed and declared, between and by the parties hereto, that the said [*trustees*], their executors, administrators, and assigns, shall stand and be possessed of, and interested in the said sum of pounds, three per cent. consolidated bank annuities, so by the said [*purchaser*] purchased in their names, as hereinbefore is mentioned, and of and in the annual produce thereof, upon and for the trusts, intents, and purposes, hereinafter expressed and declared of and concerning the same, (that is to say,) *Upon trust*, that they the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, do and shall, in the first place, by and out of the dividends and annual produce of the said sum of pounds, three per cent. consolidated bank annuities, levy and raise the annual sum of pounds, of lawful money of

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and that he will indemnify him against all claims.

Second testatum, whereby it is declared, that the trustees shall stand possessed of the purchase-money,

Upon trust, first, to pay the annual sum bequeathed by the will to the servant,

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Great Britain and Ireland, and pay the same to the said [W. H.], or his assigns, for his life, in satisfaction and discharge of the annual sum of pounds bequeathed by the said [*testator*] to the said [W.H.], and his assigns, for his life, as hereinbefore is mentioned; *And* subject thereto,

and until the conveyance of the fee, pay dividends to the tenant for life;

upon trust, that they the said [*trustees*] and the survivor of them, and the executors and administrators of such survivor, do and shall in the mean time, and until the said [C. G.] the son, his heirs or assigns, shall in pursuance of the covenant for that purpose hereinbefore entered into by the said [*covenantor*] party hereto, convey and assure the messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, or as he or they shall direct or appoint, pay the dividends and annual produce of the said sum of pounds unto, or permit the same to be received by the said [*tenant for life*] and his assigns, for and during the term of his life, for his and their own use and benefit: *And* upon this further trust, that if the said [C. G.] the son, or his heirs or assigns, shall in pursuance of the covenant hereinbefore for that purpose entered into by the said [*covenantor*] party hereto, convey and assure the messuages or tenements, lands, hereditaments, and premises, hereby released, or intended so to be, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, or as he or they shall direct or appoint; *Then* and in that case, if the said [*tenant for life*] shall be then living, the said [*trustees*], or the survivor of them, and the executors, administrators, or assigns of such survivor, shall transfer the said sum of pounds, three per cent. consolidated bank annuities, to two or more trustees, to be for that purpose named by the said [*tenant for life*], and the said [C. G.] the son, his heirs or assigns, *In trust* to pay the dividends and annual produce thereof, to the said [*tenant for life*] and his assigns, during his life; *And* after his decease, to transfer the principal sum of pounds, three per cent. consolidated bank annuities, to the said [C. G.] the son, his heirs and assigns, or other the person or persons who shall convey the said messuages or tenements, lands,

and if the remainder-man shall convey in pursuance of the covenants, then, if tenant for life shall be living, to transfer the purchase money to trustees, in trust to pay the dividends to tenant for life for his life;

and after his decease to transfer the purchase money to remainder-man;

hereditaments, and premises, hereby released, or intended so to be, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns; *But* if the said [*tenant for life*] shall depart this life before such conveyance shall be made as aforesaid, *Then* upon trust that the said [*trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, *Do* and shall immediately upon or after the execution of such conveyance, transfer the said sum of pounds, three per cent. consolidated bank annuities, and the dividends and annual produce thereof, unto the said [C. G.] the son, his heirs and assigns, or other the person or persons who shall convey the said messuages or tenements, lands, hereditaments, and premises, hereby released, or intended so to be, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns: *And* upon this further trust, that if the said [C. G.] the son, his heirs or assigns, shall refuse or neglect, for the aforesaid space of six months, to convey the said messuages or tenements, lands, hereditaments, and premises, hereby released, or intended so to be, with the appurtenances, unto the said [*purchaser*], or as he or they shall direct or appoint, in pursuance of the covenant hereinbefore for that purpose entered into by the said [*covenantor*] party hereto; *Then* and in that case, the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, *Do* and shall immediately after the decease of the said [*tenant for life*], and such neglect or refusal of the said [C. G.] the son, his heirs or assigns, as hereinbefore is mentioned, transfer and assign the said sum of pounds, three per cent. consolidated bank annuities, and the dividends and annual produce thereof, unto the said [*purchaser*], his executors, administrators, or assigns: *And* upon this further trust, that if such conveyance as aforesaid, shall not be executed by the said [C. G.] the son, his heirs and assigns, in the life-time of the said [*tenant for life*], *Then* on the death of the said [*tenant for life*], and in the mean time, and until the said [C. G.] the son, his heirs, or assigns, shall execute, or neglect or refuse to execute, the said conveyance, in pursuance of the said covenant entered into by the said

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but if tenant for life shall die before conveyance shall be made, upon trust to transfer the purchase money when such conveyance shall be made;

but if the remainder-man shall refuse to convey the premises,

then upon trust, after decease of tenant for life, to transfer purchase-money to purchaser;

and if conveyance shall not be executed in life-time of tenant for life, then on his death; and until remainder-man shall execute, to accumulate the dividends.

BY TENANT FO LIFE, WITH PROVISION FOR THE CONVEYANCE OF THE REMAINDER BY AN INFANT.

[*covenantor*], they the said [*trustees*], and the survivor of them, or the executors, administrators, or assigns of such survivor, *Do* and shall receive the dividends and annual produce of the said sum of pounds, three per cent. consolidated bank annuities, and accumulate the same for the benefit of the person or persons, who under the trusts and purposes hereinbefore contained, shall become entitled to the said sum of pounds, three per cent. consolidated bank annuities, and the annual dividends and produce thereof. PROVIDED ALWAYS nevertheless, and it is hereby agreed and declared, that if the said sum of pounds, three per cent. consolidated bank annuities, shall in pursuance of the trusts hereinbefore expressed or contained, be transferred to the said [*purchaser*], his executors, administrators, or assigns, the same shall be accepted and taken by him and them, in, or as far as the same will extend, towards the satisfaction and discharge of the sums of money, costs, charges, damages, and expenses, which he the said [*purchaser*], his heirs, executors, administrators, or assigns, shall be entitled to, have, claim, demand, recover, or receive of or from the said [*covenantor*], his heirs, executors, administrators, or assigns, for or by reason or on account of the covenants and agreements hereinbefore entered into by the said [*covenantor*]. PROVIDED ALWAYS, that if any of the trustees hereby appointed, or to be appointed, as hereinafter is mentioned, or any of them, or their, or any of their heirs, executors, administrators, or assigns, shall happen to die, or be desirous of being discharged of and from, or refuse or become incapable to act in the trusts hereby reposed in them, before the said trusts shall be fully performed, then if the trustee or trustees so dying, or declining to act, shall be the said [*trustee appointed by tenant for life and covenantor*], his executors or administrators, or any trustee or trustees to be appointed in the place of him or them, as hereinbefore is mentioned, *It* shall and may be lawful for the said [*tenant for life and covenantor*], his executors and administrators, by any writing under his or their hands, to appoint any person or persons to be a trustee or trustees, in the room of the person or persons so dying or declining to act, as aforesaid: *And* if the trustee

Proviso, that if the purchase-money shall be transferred to purchaser, it shall be taken in satisfaction of damages.

Power to change trustees.

BY TENANT FOR LIFE, WITH PROVISION FOR THE CONVEYANCE OF THE REMAINDER BY AN INFANT.

or trustees so dying or declining to act, shall be the said [*trustee appointed by the purchaser*], his executors, administrators, or assigns, or any trustee or trustees to be appointed in the place of him or them, as hereinbefore is mentioned, it shall and may be lawful for the said [*purchaser*], his executors and administrators, by any writing under his or their hands, to appoint any person or persons to be a trustee or trustees, in the room of the person or persons so dying or declining to act, as aforesaid: *And* the said trust monies and premises shall be vested in the new trustee or trustees, solely, or jointly with the surviving or continuing trustee or trustees, as occasion shall require; *And* such new trustee or trustees shall have the same powers and authorities, as if he or they had been originally nominated a trustee or trustees, in this present indenture. PROVIDED ALWAYS, that the trustees and trustee hereby appointed and to be appointed, and all and every of their executors and administrators, shall not be answerable the one for the others or other of them, or for signing receipts for sake of conformity, or for any involuntary loss; *And* that it shall be lawful for them and him to reimburse themselves their costs, charges, and expenses, in discharging these trusts (*c*). IN WITNESS, &c.

And that the new trustees shall have the old power.

Provision for their indemnity and reimbursement.

(*c*) Where any other portion of the property of an infant is sold, the form may easily be framed from the above precedent. And see an agreement for the sale of an infant's estate, and covenant that he shall convey, 1 Byth. Stewart's edit. 94.

Infant's property.

BY TENANT BY THE CURTESY.

Conveyance *by* Tenant by the Curtesy *of his Estate for his Life* (*a*) *to Purchaser.*

THIS INDENTURE, made the day of , Between [*vendor*] of, &c. of the one part, and [*purchaser*] of the other part. (*b*) Whereas the said [*vendor*] intermarried with [M. B.] of, &c. on or about day of ; And whereas the said [*wife*] was at the time of the said marriage, and until the time of her death hereinafter mentioned, seised of or well entitled to an estate of inheritance in fee simple, of and in the said messuages or tenements, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances; And whereas there was issue of the said

Parties.

Recital of vendor's marriage.

Seisin of wife.

Issue of the marriage.

Estate of tenant by the curtesy.

(*a*) If there is living issue of the marriage, the husband acquires an estate for life in all the lands or tenements which such issue might have inherited, and of which his wife was actually seised in fee simple or fee tail. See Litt. s. 35, 52. 8 Co. 35 b. 8 Co. 69. Co. Litt. 29 b. *Hooker* v. *Hooker*, Cas. temp. Hard. 13; and of those incorporeal hereditaments, of which there cannot be an actual seisin; but he will not be seised as tenant by the curtesy of those hereditaments in which she has a mere estate for life. *Doe* v. *Hutton*, 8 Bos. & Pull. 343; 6 T. R. 679. And if a term of years be placed between the estate for life limited to the wife, and an estate in fee vested in her, as the possession of the lessee is the possession of the wife, the husband will be entitled to an estate by the curtesy. *De Grey* v. *Richardson*, 3 Atk. 469. And there will be curtesy in a trust estate. *Watts* v. *Ball*, 1 P. Wms. 108. *Chaplin* v. *Chaplin*, 3 P. Wms. 234. 1 Eden. 194, 226. S. C.; and in an equity of redemption, *Casborne* v. *Scarfe*, 1 Atk. 603. And see *post*, note on Dower.

(*b*) Instead of reciting the history of the title as above, there may be a simple recital of seisin as follows:

Simple recital of seisin.

"And whereas the said [*vendor*] is seised of the hereditaments and premises hereinafter described, and intended to be hereby granted and released, for the term of his life, as tenant by the curtesy of England;"

marriage three daughters, who were born alive, and no other children; AND WHEREAS the said [*wife*] departed this life on or about the day of ; AND WHEREAS the said [*vendor*], on the death of the said [*wife*], became, and is now seised of or well entitled to the said messuages or tenements, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, for and during the term of his natural life, as tenant by the curtesy of England; AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said messuages or tenements, hereditaments, and premises, for the estate therein of the said [*vendor*], for the term of his natural life, free from incumbrances, at or for the price or sum of pounds; NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, *And* in consideration, &c. (*consideration and receipt*, as ante, p. 256), HE the said [*vendor*] *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm, unto the said [*purchaser*], in his actual, &c. (*reference to lease for a year*), and his heirs, ALL THOSE, (*c*) &c. (*parcels*), *Together* with, &c. (*general words*), *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singular other the premises, unto the said [*purchaser*] and his heirs, for and during the natural life of the said [*vendor*], *To the use* of the said [*purchaser*], his heirs and assigns, for and during the natural life of the said [*vendor*]. (*d*) (*Covenants for title*, as ante, p. 420-1). IN WITNESS, &c.

BY TENANT BY THE CURTESY.

Death of wife.

Seisin of vendor, as tenant by the curtesy.

Contract for purchase.

Testatum, whereby, in consideration of purchase money, vendor conveys

Parcels.

Habendum, for the life of vendor, to purchaser.

Covenants for title by reference.

(*c*) The husband takes, and can only convey the property, subject to all the charges or incumbrances which would affect it if it had remained in the possession of the wife. Dy. 51 b. n. (17.) and neither he nor his assignee is dispunishable for waste. 3 Co. 23 b.

Charges on estate.

(*d*) If the purchaser is the heir, or other person entitled to the reversion, the life estate should be conveyed to a trustee, to prevent a union with the reversion, and a consequent right of dower in the wife of the purchaser.

Purchaser heir.

OF AN EQUITY OF REDEMPTION TO A STRANGER.

CONVEYANCE *of an Equity of Redemption in a Manor, and other Hereditaments, to a Purchaser, subject to the Payment of the several Sums secured thereon by way of* MORTGAGE: *a short History of* PARCELS *being mentioned after their Description.*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*vendor*], a captain in the seventh regiment of light dragoons, of the one part, and [*purchaser*], of Trowbridge, in the county of Wilts, gentleman, of the other part. WHEREAS, by indentures of lease and release, bearing date respectively on or about the and days of , and made, or expressed to be made, between the said [*vendor*], of the one part, and [*mortgagee*] (therein described), of the other part; the manors, messuages, hereditaments, and premises hereinafter mentioned, and intended to be hereby released, with their rights, members, and appurtenances, were, in consideration of the sum of pounds, by the said [*mortgagee*] to the said [*vendor*] paid, as in the said indenture of release is mentioned, conveyed by the said [*vendor*] unto and to the use of the said [*mortgagee*], his heirs and assigns for ever; but subject to the proviso or condition in the said indenture of release contained for redemption of the said manors, messuages, hereditaments, and premises, on payment by the said [*vendor*], his heirs, executors, administrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same respectively, after the rate, and on or at the days or times, in the said indenture of release mentioned for the payment thereof respectively: AND WHEREAS, by an indenture bearing date the day of , and made, or

Recital of indentures of lease and release, whereby premises are mortgaged by vendor to mortgagee, in fee.

Indenture of further charge.

expressed to be made, between the said [*vendor*] of the one part, and the said [*mortgagee*] of the other part; the said [*vendor*], in consideration of the sum of pounds, paid by the said [ ] to the said [*vendor*], as therein is mentioned, charged the said manor, messuages, hereditaments, and premises comprised in and conveyed by the hereinbefore recited indentures of lease and release, with their rights, members, and appurtenances, with the payment to the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of pounds, then lent and advanced, as aforesaid, with interest for the same, after the rate, and at the time therein mentioned; AND WHEREAS, by an indenture bearing date the day of , and made, or expressed to be made, between the said [*vendor*] of the one part, and the said [*mortgagee*] of the other part; the said [*vendor*], in consideration of the sum of pounds paid, and of the further sum of pounds then agreed to be, and since advanced and paid, by the said [*mortgagee*] to the said [*vendor*], HE the said [*vendor*] charged the said manor, messuages, hereditaments, and premises comprised in and conveyed by the said hereinbefore recited indentures of lease and release, with their rights, members, and appurtenances, with the payment to the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of pounds, then lent and advanced, and of the said sum of pounds, then agreed to be, and since lent and advanced as aforesaid, with interest for the same respectively, after the rate, and at the time therein mentioned; AND WHEREAS, the said several sums of pounds, pounds, pounds, and pounds, so respectively secured to the said [*mortgagee*] as aforesaid, amounting together to the sum of pounds, still remain due and owing to the said [*mortgagee*]; but all interest for the same hath been paid up to the day of the date of these presents, as he the said [*vendor*] *Doth* hereby acknowledge: AND WHEREAS, the said [*purchaser*] hath contracted and agreed with the said [*vendor*], for the absolute purchase of the said manor, messuages, hereditaments, and premises hereinafter described, and intended to be hereby granted

OF AN EQUITY OF REDEMPTION TO A STRANGER.

Deed of further charge of monies paid and agreed to be paid.

That mortgage sums remain due, but that interest thereon has been paid.

Contract for purchase.

OF AN EQUITY OF REDEMPTION TO A STRANGER.

and released, with their rights, members, and appurtenances, and the inheritance thereof in fee simple, free from incumbrances, except the land-tax, and except the said principal sums of pounds, pounds, pounds, and pounds, so respectively secured to the said [*mortgagee*], as aforesaid, and the interest henceforth to grow due for the same, at or for the price or sum of pounds. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] paid, at or before the sealing and delivering of these presents, (the receipt of which said sum of pounds he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators, and assigns,) *He* the said [*vendor*], *Hath* granted, bargained, sold, aliened, released, and confirmed, and by these presents *Doth* bargain, sell, alien, release, and confirm, unto the said [*purchaser*], (in his actual possession now being, &c. *reference to lease for a year*), and his heirs, ALL THAT the manor of , in the county of ; *And* also all that close of meadow or pasture ground, &c. &c.; which said messuage or tenement, farm-house, close of land, and premises, lastly hereinbefore described, were purchased by [A. B.], late of , Esquire, deceased, (the father of the said [*vendor*],) of [X. Y.] of, &c. Esquire, *And* were devised by the last will and testament of the said [A. B.], bearing date the day of , to the said [*vendor*] and the heirs of his body; and were by an indenture of bargain and sale duly enrolled, bearing date the day of , and made, or expressed to be made, between the said [*vendor*] of the first part, [*mortgagee*] of the second part, and the said [*purchaser*] of the third part; *And* by a common recovery suffered in pursuance of the agreement for that purpose contained in the said indenture of bargain and sale, in the Court of Common Pleas, at Westminster, in Term, in the year discharged from the said estate in tail male of the said

Testatum, that in consideration of purchase-money, vendor conveys to purchaser,

Parcels, with short history thereof.

OF AN EQUITY OF REDEMPTION TO A STRANGER.

[*vendor*] therein, and the remainders and reversion thereupon expectant or depending, and were assured and limited *To the use* of the said [*vendor*], his heirs and assigns for ever; *Together* with all and singular houses, &c. (*general words*); *And* the reversion, &c.; *And* all the estate, &c. To HAVE AND TO HOLD the said manors, messuages, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said [*purchaser*], his heirs and assigns, *To the only proper use* of the said [*purchaser*], his heirs and assigns for (*a*) ever, (subject nevertheless to the land-tax henceforth to become due and payable in respect of the same premises, and also subject to the said principal sums of pounds, pounds, pounds, and pounds, so respectively secured to the said [*mortgagee*], as hereinbefore is mentioned, and the interest henceforth to grow due for the same, and the securities for the payment of the said principal sum and interest; *And* the said [*vendor*] (*Covenants that he hath good right to convey; for quiet possession, free from incumbrance (except as appears by these presents); And for further assurance,* as ante, p. 259.) IN WITNESS, (*b*) &c.

Habendum to the purchaser in fee.

(*a*) As no dower attaches on an equity of redemption, it may be conveyed to a purchaser in fee, and in case of the paying off the mortgage debt, the premises may then be conveyed to the purchaser, to the usual uses to bar dower. Dower.

(*b*) As to the proper conveyance to be adopted in the conveyance of an equity of redemption, see *post*, 436. Mode of conveyance.

OF EQUITY OF REDEMPTION.

Conveyance *of* Premises *by One of Two* Mortgagees, *and the* Mortgagor, *to the other* Mortgagee *in Fee.*

Parties.

Recital of mortgage to two;

and that all interest has been paid;

that mortgagees are equally entitled.

This Indenture, made the day of , Between [*mortgagee, purchaser*], of the first part; [*other mortgagee*], of the second part; [*mortgagor*], of the third part; and [*releasee to uses*], of the fourth part. Whereas by indentures of lease and release, bearing date on or about the and days of , and made or expressed to be made between the said [*mortgagor*] of the one part, and the said [*mortgagees*] of the other part, the messuages or tenements, hereditaments, and premises hereinafter described and intended to be hereby granted and released, with the appurtenances, were (in consideration of the sum of pounds, by the said [*mortgagees*] to the said [*mortgagor*] paid, as in the said indenture of release is mentioned,) conveyed to the said [*mortgagees*], their heirs and assigns for ever; *But* subject nevertheless to a proviso or condition for making void the said indenture on payment by the said [*mortgagor*] to the said [*mortgagees*], their executors, administrators, or assigns, of the sum of pounds, and interest for the same after the rate of five pounds for one hundred pounds by the year, at the times and in the manner therein mentioned; And whereas all interest which hath accrued or become due upon, or in respect of the said sum of pounds, hath been paid up to the day of the date of these presents, as they the said [*mortgagees*] do hereby respectively acknowledge; And whereas the said [*mortgagees*] are entitled to the said sum of pounds so secured to them as aforesaid, in

equal shares; AND WHEREAS the said [*mortgagee*] hath contracted with the said [*mortgagor*] for the absolute purchase of the said messuages or tenements, hereditaments, and premises, hereinafter described, and intended to be hereby released, and the inheritance thereof in fee simple in possession free from incumbrances, at or for the price or sum of pounds; AND WHEREAS the said [*mortgagee*] hath this day paid unto the said [*other mortgagee*] the sum of pounds, being half the said sum of pounds, so secured as aforesaid; AND WHEREAS the said [*mortgagee*], and at his request, the said [*other mortgagee*], have agreed to release and discharge the said [*mortgagor*], and the same messuages or tenements, hereditaments, and premises, from the said mortgage debt of pounds, and the interest thereof; *And* the said [*mortgagor*] hath agreed to accept such payment, release, and discharge, in lieu of, and as an equivalent for the sum of pounds, so contracted or agreed to be paid by the said [*mortgagee*], for the purchase of the said messuages or tenements, hereditaments, and premises, as aforesaid. Now THIS INDENTURE WITNESSETH, that in consideration of the release and discharge hereinafter contained, by the said [*mortgagees*] to the said [*mortgagor*], of and from the said mortgage debt of pounds, and in consideration of the said sum of pounds, so paid by the said [*mortgagee*] to the said [*other mortgagee*], as hereinbefore is mentioned; HE the said [*mortgagee*], at the request and by the direction of the said [*other mortgagee and mortgagor*], (testified by their respectively being parties to and executing these presents;) *And* also THEY the said [*mortgagee and mortgagor*], so far as they can or may at law or in equity, *Have*, and each of them *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Do*, and each of them *Doth*, grant, bargain, sell, alien, release, and confirm, unto the said [*releasee to uses*], (in his actual possession, &c.) and his heirs, ALL, &c. (*parcels*); *And* the reversion, &c.; *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their appurtenances,

OF EQUITY OF REDEMPTION.

Contract for purchase by one mortgagee;

that mortgagor has paid one half of the money,

and that both have agreed to release the premises;

and that mortgagor has agreed to accept the discharge in lieu of purchase money.

Testatum, in consideration of release,

Habendum,

OF EQUITY OF REDEMPTION.

unto the said [*releasee*] and his heirs, *To the only proper use and behoof* of the said [*mortgagee*], his heirs and assigns for ever, absolutely freed and discharged of and from the sum of pounds and the interest thereof, and every part thereof respectively, and all claims and demands for or on account of the same: (*Covenant from mortgagee against incumbrances*, see ante, p. 293; *from mortgagor, that he has good right to convey, for quiet enjoyment, free from incumbrances, and for further assurance*, as ante, p. 259). AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the grant and release hereinbefore contained, *He* the said [*mortgagee*], at the request and by the direction of the said [*other mortgagee*], (testified as aforesaid,) *And* also *He* the said [*other mortgagee*], *Do* and each of them *Doth* hereby acquit, release, and for ever discharge the said [*mortgagor*], his heirs, executors, administrators, and assigns, and his, their, and every of their estates and effects whatsoever and wheresoever, from the said mortgage debt of pounds and the interest thereof and every part thereof respectively, and all claims and demands whatsoever for or on account of the same respectively (*a*). IN WITNESS, &c.

Second testatum, whereby mortgagees release the mortgagor from the mortgage debt.

Conveyance of equity of redemption to stranger.

(*a*) It is conceived that no difficulty will be found in adapting this form, with the help of the last, to a conveyance of an equity of redemption, with the concurrence of the mortgagee, a to stranger. A separate form therefore is not given. A simple conveyance of an equity of redemption to a mortgagee, will be found under the title MORTGAGE.

Proper mode of conveying equity of redemption.

What interest it is.

The principal points relating to the conveyance of an equity of redemption, may here be mentioned. An equity of redemption is an equitable estate or interest, and may be aliened, devised, or entailed; will descend, if of real estate, and if of chattels, will devolve to the mortgagor's personal representatives. *Casborne* v. *Scarfe*, 1 Atk. 603, 605. 2 Eq. Ca. Ab. 594. *Tucker* v. *Thurston*, 17 Ves. 133. *Blake* v. *Johnstone*, Prec. Cha. 142. *Pettat* v. *Ellis*, 9 Ves. 563. *Lloyd* v. *Lauder*, 5 Madd. 290. *Burgess* v. *Wheate*, 1 Eden. 225. 1 Bla. Rep. 123. S. C. *Shoraporel* v. *Vernon*, 2 B. C. C. 271. But an equity of redemption is not an estate in the eye of the law, *Preston* v. *Christmas*, 2 Wils. C. L. Rep. 86; *Boscarick* v. *Burton*, 1 Chan. Ca. 217; *Phillips* v. *Hale*, 1 Chan. Rep. 190; *Cholmondeley* v. *Clinton*, 2 Meriv. 359. It follows therefore, that as it is only an estate in equity, it cannot be conveyed to a use.

Lease and release the proper mode of con-

The technical conveyance, therefore, for transferring an equity of redemption, would be a simple grant or release, and not a lease and release, or other assurance deriving its effect from the statute of uses. Nevertheless, in practice, when an equity of redemption on a mortgage in fee is conveyed, a lease and release is generally employed, as any defect in the mortgage deeds will thereby be obviated; and if any legal estate remain in the mortgagor, the lease and release will convey it from him, whilst a simple grant or release might not have that effect; and this caution is in conformity with the constant practice of conveyancers. But where the person to whom the equity of redemption is to be conveyed, is the mortgagee himself, a mere release indorsed on the back of the mortgage deed will be all that is necessary, and the mortgagee will then be seised in fee, discharged from the mortgage. See title MORTGAGE, where a form is given. If the equity of redemption of a mortgage for a term of years is conveyed separately, without conveying also the reversion expectant on the term, a simple assignment will be the proper assurance; but this is of very rare occurrence, as it is usual also to convey the reversion of the mortgagor: and here again a lease and release are almost universally employed; and the term, if it be thought adviseable, may be assigned to attend the inheritance.

veying an equity of redemption on a mortgage in fee,

except to mortgagor.

Equity of redemption on a mortgage for a term.

It is proper to observe, that if a vendor is desirous on a conveyance of an equity of redemption, of making a reservation to himself, he must first take a conveyance of the legal estate from the mortgagee to himself, and then execute the conveyance to the purchaser, making such reservation as he may wish. See *Cheetham* v. *Williamson*, 1 Smith. Rep. 278. *Moore* v. *Plymouth*, 8 B. & A. 65.

Reservation by vendor.

A SHARE IN A WILL BY BARGAIN AND SALE (*b*).

Conveyance *of a* Part or Share *devised by a Will to a Purchaser by* Bargain and Sale, (*a very concise form.*) (*a*)

Parties.

Testatum, whereby the premises are conveyed.

THIS INDENTURE, made the day of , Between [*vendor*], of the one part, and [*purchaser*], of the other part; Witnesseth, that in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] well and truly paid, at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged, and of and from the same and every part thereof, doth hereby for ever discharge the said [*vendor*], his heirs, executors, and administrators); He the said [*vendor*], *Hath* bargained (*b*), sold, and confirmed, *And* by these presents *Doth* bargain, sell, and confirm unto the

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Brevity.

(*a*) This precedent was drawn by a conveyancer of eminence, and is here inserted as a specimen of the brevity with which a deed may be expressed, preserving throughout the long established forms of practice.

It is by bargain and sale, and must consequently be enrolled. The general reference to the parcels however cannot be recommended. In conveyances to suffer recoveries, settlements, or trust deeds, general words, comprehending all a man's estates, are not unusual; but they are very uncommon in purchase deeds, and can very rarely be inserted with propriety. Both parties ought to know precisely what is bought and sold, in order to determine the price.

Two bargains and sales.

(*b*) There are two assurances known by the name of bargain and sale; the one which does, and the other which does not, operate by force of the statute of uses. I shall shortly consider each of these assurances, which are perfectly distinct.

A SHARE IN A WILL BY BARGAIN AND SALE.

said [*purchaser*], his heirs and assigns, ALL the part and share, parts and shares, by the will of the said [A. B.] of, &c. devised or bequeathed to the said [*vendor*], for any estate or interest whatsoever in the messuages, lands, and hereditaments therein mentioned to be situate, lying, and being at , in the county of , or in any other messuages, lands, or hereditaments whatsoever, To HAVE AND TO HOLD the said part and share, or parts and shares, of and in the said messuages, lands, and hereditaments, unto and to the use of the said [*purchaser*], his heirs and assigns for ever; *And* the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT with and to the said [*purchaser*], his heirs and assigns, that for and notwithstanding any act, deed, mat-

Habendum.

General covenants for title (very short).

1st. Bargain and sale operating under the statute.

The bargain and sale operating under the statute of uses, (which is the form generally intended by this name) existed before this statute; the bargainor being a trustee for the bargainee, and the statute of uses merely gave the bargainor a legal instead of an equitable estate. The principal points relating to it are as follow:

Must be enrolled.

It must be enrolled by virtue of an express statute, if it relate to the freehold or inheritance, within six months after date, 27 Hen. VIII. c. 16, and Irish Act, 10 Car. II. c. 1, s. 18; but the estate vests on the execution of the deed, subject to be divested on noncompliance with the provision of the act. 1 Prest. Conv. 28. Shep. Touch. by Prest. 223. An actual consideration of money, or money's worth, is essential to it. *Barker* v. *Keate*, 2 Mod. 252, 1 Freem. 249; but the amount of the consideration is of no importance; and if it is expressed in the deed its actual payment need not be proved. Touch. 223.

Consideration essential.

What property may be conveyed by it.

All corporeal hereditaments of which the bargainor has a seisin, and all incorporeal hereditaments in actual existence, may be conveyed by bargain and sale, because they may be limited to uses. See Shep. Touch. 222. Cro. Jac. 189. So a trust declared upon a legal estate, and an equity of redemption, may be transferred by this conveyance. *Oldin* v. *Samborn*, 2 Atk. 15. A man seised in fee may convey by bargain and sale for a term of years; but no chattel interest already created can be transferred by bargain and sale, because the statute requires a seisin to serve uses, and the owner of a chattel interest can only have a *possession*. Poph. 76. 2 Sand. Us. 52.

Effect of it.

A bargain and sale is an innocent conveyance, and only operates upon what the grantor may lawfully convey. A conveyance therefore by a particular tenant by bargain and sale, will not create a forfeiture,

A SHARE IN A WILL BY BARGAIN AND SALE.

ter, or thing whatsoever, *He* the said [*vendor*] hath good right, full power, and absolute authority, to bargain and sell the said hereditaments and premises hereby bargained and sold, or intended so to be, with their appurtenances, to the use of the said [*purchaser*], and in the manner hereinbefore mentioned; *And* that the said hereditaments and premises hereby bargained and sold, or intended so to be, shall be peaceably and quietly held and enjoyed, and the rents, issues, and profits thereof taken by the said [*purchaser*], his heirs and assigns, without any lawful let, suit, eviction, or disturbance whatsoever; *And that* he the said [*vendor*], and all persons having or claiming any estate or interest in the said hereditaments and premises, shall and will, upon the request, and at the costs

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Gilb. Us. 102; or destroy contingent remainders dependant upon the particular estate. Gilb. Us. 140. Fearne, 472. 7th edit. An example of this kind of bargain and sale is given in the form above.

Bargain and sale unusual.

This assurance, however, is now very unusual in practice: for in the first place it is attended with the additional ceremony of enrolment; and next, as uses cannot be declared on the seisin of the bargainee, it is unfit for carrying into effect the usual intentions of parties on purchases. Its adoption is now almost entirely confined to recovery deeds, which are usually in this form.

2d. Bargain and sale not deriving its effect from the statute.

Secondly: The bargain and sale which does not derive its effect from the Statute of Uses, is either made in pursuance of a common law power, or of a power contained in an act of parliament. An example of the former is given in the conveyance of copyholds by executors, in pursuance of a direction contained in a will, see *post*, 442; and as an example of the latter, the usual bargain and sale of commissioners under a commission of bankruptcy may be mentioned; a form of which may be found in Eden, * B. L. 2d edit. 129. The bargain and sale of land-tax and other public commissioners are also of this nature.

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* Mr. Eden, however, is incorrect in thinking that this bargain and sale is a bargain and sale under the Statute of Uses, and consequently requires enrolment within six months; Eden, B. L. 225; for the bargain and sale operates wholly by force of the common law and of the bankrupt acts, and the new act prescribes no time for its enrolment. Mr. Coventry has also fallen into a similar error. Coventry on Inclosures, 50.

A SHARE IN A WILL BY BARGAIN AND SALE.

and charges of the said [*purchaser*] and his heirs or assigns, make, do, and execute such acts, deeds, conveyances, and assurances in the law, for the further, better, and more perfectly and absolutely conveying, assuring, and confirming the premises hereby bargained and sold, or intended so to be, with their appurtenances, unto and to the use of him the said [*purchaser*], his heirs and assigns for ever, as by him the said [*purchaser*], his heirs and assigns, shall be reasonably advised or required. IN WITNESS, &c.

Land of debtors to the crown may be sold.

Thus also by the 25 Geo. III. c. 35, s. 1, the Court of Exchequer may order the lands of any debtor to the king to be sold, and when a purchaser shall be found, the conveyance of the lands shall be made by the remembrancer of such court, or his deputy, by bargain and sale to be enrolled in such court. If the premises be sold under direction of this court, make the remembrancer or his deputy a party of the first part, and the debtor or owner of the estate of the second part, and the purchaser of the third part; and recite the orders for the sale, and the sale accordingly; which see, *ante*, 378, recitals of a purchase under an order of the Court of Chancery; but it was not thought necessary to introduce a separate form for this conveyance.

Operative words.

The operative words in a bargain and sale at common law, and a bargain and sale under the statute of uses, are the same; but they are essential to neither, as any other words of conveyance would answer the same purpose. See 8 Co. 94 a. 7 Co. 40. 3 Leon. 16. Ca. 39. And see further, as to this assurance, Shep. Touch. by Prest. 221. 2 Sand. Us. 43, and the Abridgements of Bacon, Viner, and Comyn, where all other information on this subject may be found.

OF COPYHOLDS BY BARGAIN AND SALE.

Conveyance *of* Copyholds (*a*) *by* Trustee *for Sale, under a Trust created by a* Will, *by* Bargain and Sale (*b*); *with a Variation for the* Heir at Law *joining in the Conveyance.*

Parties.

Recital that A. B. surrendered to his will;

THIS INDENTURE, made the day of , BETWEEN [*trustee for sale*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part (*c*). WHEREAS at a special court baron holden for the manor of , in the county of , on or about the day of , [A. B.] of, &c. surrendered into the hands of the lord of the said manor, ALL and singular his copyhold lands, tenements, and hereditaments whatsoever, holden of the said manor of , by copy of court roll, *To* such uses, ends, intents, and purposes, as then were or should thereafter be declared in and by his last will and testa-

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(*a*) A conveyance of freeholds conveyed under a power by executors, will be in the same form, except that the recital of the will will be as *ante*, p. 382.

If there be an authority to sell, trustees need not be admitted.

(*b*) The legal estate in copyholds cannot be conveyed without a surrender; but where there is direction or authority in a will to trustees to sell, so that no estate or interest is vested in the trustee or trustees which would require admittance, they may convey by bargain and sale operating by the common law, or any other common law conveyance, and the vendee will be in under the will, and only one fine will be incurred, *Holden* v. *Preston*, 2 Wils. 400; and until the vendee is admitted by the lord, the legal estate will descend to the heir at law of the testator.

Heir at law.

(*c*) The heir at law may be made a party, of the third part, in order that he may covenant for the title; and his concurrence and that of the *cestui que trust* should, if possible, be obtained. Those covenants may be taken in the same deed as the conveyance, as above; but the better mode, perhaps, is to take the covenants by a separate instrument, and enter the only deed of conveyance on the rolls.

OF COPYHOLDS BY BARGAIN AND SALE.

ment: AND WHEREAS the said [A. B.] duly made and published his last will and testament in writing, bearing date on or about the day of , and thereby directed that it should and might be lawful to and for the said [*trustees*], or the survivor of them, his heirs and assigns, to make sale and dispose of all or any part of his said copyhold estates whatsoever and wheresoever, with the appurtenances, or any of them, or any part thereof respectively, for such price or prices as to them or him should seem reasonable, and either by public auction or private contract; and to convey the same to the person or persons to whom the same should be so agreed to be sold, and to his, her, or their heirs, executors, or administrators, or otherwise, as he, she, or they should direct or appoint; *And* upon payment of the money to arise by the sale thereof, or of any part or parts thereof, to sign and give proper receipts for the money for which the same should be sold; *And* the said testator did thereby declare, that the said receipt or receipts should be a good and sufficient discharge or good and sufficient discharges for the money which in such receipt or receipts should be expressed to be acknowledged or received, and that such purchaser or purchasers paying such money, and taking such receipt or receipts, should not afterwards be answerable or accountable for the loss, misapplication, or nonapplication of the same: *And* by the said will it was declared that the said [*trustees*] should stand possessed of the monies arising from such sale or sales, upon and for the trusts (*a*), intents, and purposes, and in the manner in the said will expressed

and that A. B. made his will, and thereby directed trustees to sell the same;

and to give discharges for the same.

(*a*) If this clause be contained in the deed, and be recited, it is not necessary to recite the trusts of the money to be received, but they should merely be alluded to as above. But if this clause has been omitted in the deed or will, and the trusts are such as will oblige the purchaser to look to the application of the purchase money, and are not for the payment of unscheduled debts, they should be recited, and the persons entitled to receive it should be made parties to the deed, and statements of the purchase money being paid to them be inserted therein, and their receipts taken; or a statement of the payment of the money to the trustees, with their privity and assent, for the purpose of the trust, should be inserted. See *ante*, 375, n. (a).

Necessity of reciting trusts.

OF COPYHOLDS BY BARGAIN AND SALE.

and declared. AND WHEREAS the said testator departed this life on or about the day of , in the year (*a*), without having altered or revoked his said will,

Death of testator, and probate of will;

and the same will was on or about the day of following, duly proved in the Prerogative Court of the Archbishop of Canterbury, by the said [*trustees*], who were also his executors therein named. AND WHEREAS

Contract for purchase.

the said [*purchaser*] hath contracted and agreed with the said [*trustees*], for the absolute purchase of the said copyhold messuages or tenements, lands, hereditaments, and premises, hereinafter described, and intended to be hereby bargained and sold, and the inheritance thereof in fee simple, free from incumbrances, at or for the price or sum of pounds (*b*). NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and for carrying the same into effect, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*trustees*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of pounds, they the said [*trustees*] do hereby admit and acknowledge; and of and from the same, and every part thereof, do hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, and administrators;) THEY the said [*trustees*], pursuant to the said power to them given, limited, and reserved in and by the said hereinbefore recited will of the said [*testator*], and in exercise and execution thereof, and of all and every

Testatum, whereby, in consideration of purchase-money,

trustees, in exercise of their power,

Heir at law.

(*a*) If the heir at law joins, say,

"leaving the said [O. O.] his eldest son and heir at law, him surviving."

The admittance of the heir at law is recited in some of the printed forms: but as the heir takes a mere legal estate, he should not be admitted, as he would have to pay a fine.

Heir at law.

(*b*) Where the heir at law is a party to the conveyance, say,

"AND WHEREAS the said [*heir at law*] has agreed to enter into the covenant hereinafter contained."

other power or powers, authority or authorities, enabling them in this behalf, (*c*) *Have*, and each of them *Hath*, bargained, sold, limited, and appointed, *And* by these presents *Do*, and each of them *Doth*, bargain, sell, limit, and appoint, unto the said [*purchaser*], ALL THAT, &c. (*describe parcels*), and (*general words*), *And* the reversion, &c. *And* all the estate, TO HAVE AND TO HOLD the same messuages or tenements, hereditaments, and premises hereby bargained and sold, or intended so to be, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns for ever, to be holden at the will of the lord, according to the custom of the said manor, and under and subject to the yearly rents, fines, customs, suits, and services therefore due, and of right accustomed; (*d*) *And* each of them the said [*trus-*

OF COPYHOLDS BY BARGAIN AND SALE.

bargain and sell, limit, and appoint the premises.

Habendum to the purchaser.

Covenant by trustees, that

(*c*) If the heir at law is a party, say, "and with the privity and consent of the said [*heir at law*], testified by his being a party to and sealing and delivering these presents."

Heir at law.

(*d*) The following additional witnessing part is sometimes introduced in this place.

"AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said sum of pounds, by the said [*purchaser*] to the said [*trustees*], paid as hereinbefore is mentioned, *They* the said [*trustees*] do hereby, for themselves, their heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that they the said [*trustees*], at or before the next court to be held in and for the said manor of , shall and will, at the costs and charges of the said [*purchaser*], cause and procure the said [*purchaser*], or his heirs or assigns, to be admitted as tenant or tenants of the lord or lady of the said manor of according to the custom of the said manor, to the said messuages or tenements, hereditaments, and premises, hereinafter described, and hereby bargained and sold, or intended so to be, and their appurtenances, *To hold* the same unto the said [*purchaser*], his heirs and assigns, at

Covenant by trustees to procure purchaser to be admitted.

OF COPYHOLDS BY BARGAIN AND SALE.

tees], so far as relates to his own acts and deeds, but not further or otherwise, doth hereby, for himself and his respective heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that they the said [*trustees*] have not, at any time or times heretofore, had, made, done, committed, permitted, occasioned, or suffered, any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof the said hereinbefore recited power of appointment is, can, shall, or may be revoked, suspended, defeated, surrendered, or made void or voidable, or whereby, or by reason or means whereof, the said copyhold messuages or tenements, lands, hereditaments, and premises, hereby bargained and sold, or intended so to be, or any part thereof, with their appurtenances, are, is, can, shall, or may be in anywise impeached, charged, or incumbered, in title, estate, or otherwise, howsoever. (*e*) IN WITNESS, &c. (*f*)

they have not incumbered the power or the premises.

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the will of the lord or lady of the said manor, according to the custom of the said manor, by the rents and services therefore due and of right accustomed."

Covenant for title.

(*e*) If the heir at law is a party, add the usual covenants for title of copyholds, as *ante*, 300. But if he will not join, and the estate is sold for the payment of debts, the purchaser is not entitled to covenants for the title. *Wakeman* v. *Duchess of Rutland*, 3 Ves. 233. 8 B. P. C. 145.

Stamp.

(*f*) All ordinary conveyances of copyholds, except the bargain and sale by the commissioners on the bankruptcy of a tenant, 13 Eliz. c. 7; 5 Geo. II. c. 30, are perfected by surrender, and the *ad valorem* duty is payable thereupon. But in conveyances by virtue of a *power*, either given by a will or an act of parliament, the bargain and sale will be deemed the principal instrument, and the *ad valorem* duty will be imposed upon it. 48 Geo. III. c. 149. s. 30.

RELEASE *of an undivided* MOIETY *in Freeholds, by a* JOINT-TENANT (*a*) COPARCENER, *or* TENANT IN COMMON.

OF AN UNDIVIDED MOIETY.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the first part; [*purchaser*] of, &c. of the second part; and [*trustee to bar dower*] of, &c. of the third part. WHEREAS [A. B.], late of, &c. deceased, was at the time of making his will, and of his death hereinafter mentioned, seised of, or well entitled to, for an estate of inheritance in fee simple in possession, the messuages or tenements, hereditaments, and premises hereinafter described, and of which an undivided moiety or equal half part or share is intended to be hereby granted and released, and their appurtenances; AND WHEREAS the said [A. B.], in such manner as the law requires for rendering valid devises of real estate, duly made and published his last will and testament in writing, bearing date the day of , and thereby, amongst other things, gave and devised the said messuages or tenements, hereditaments, and premises hereinafter described, and of which an undivided moiety or equal half part or share is intended to be hereby granted and released, and their appurtenances, unto the said [*vendor*], and [Z. Z.], of, &c. their heirs and assigns, as tenants in common; AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said undivided moiety, or half part or share of the said [*vendor*], of and in the said messuages or tenements,

Parties.

That A. B. was seised of hereditaments;

and that he devised the same to vendor and Z. Z., as tenants in common.

Contract for purchase,

(*a*) As to the distinction between the estates of joint tenants, coparceners, and tenants in common, see *ante*, p. 1, *et seq.*; and as to the proper modes of conveying their several shares to each other and to strangers, see *ante*, p. 14—16.

Joint tenants, &c.

OF AN UNDIVIDED MOIETY.

hereditaments, and premises hereinafter mentioned and described, and their appurtenances, free from incumbrances, at or for the price or sum of pounds. AND WHEREAS the said [*purchaser*] is desirous of having the same undivided moiety or half part or share, conveyed to him the said [*purchaser*], as hereinafter is mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, *And* in consideration, &c. (*consideration and receipt, as* ante, 256,) *He* the said [*vendor*] *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], in his actual, &c. (*reference to a lease for a year*), and his heirs, ALL that the undivided moiety or equal half part or share of the said [*vendor*], of and in ALL that, &c. (*parcels*), *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said undivided moiety or equal half part or share hereby granted and released, or intended so to be, of and in the said messuages or tenements, hereditaments and premises, hereinbefore described, and their and every of their appurtenances, unto the said [*purchaser*] and his heirs, To such uses, &c. (*uses to bar dower, see* ante, 276). *And* the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that for and notwithstanding, &c. he the said [*vendor*] is, &c. (*seised in fee and the other covenants for title, as* ante, p. 257, *et seq.*) IN WITNESS, &c.

and desire of purchaser to have premises conveyed.

Testatum.

Consideration.

Vendor conveys to purchaser

Parcels.

Habendum to purchaser to uses to bar dower.

Covenants for title.

CONVEYANCE *of a* FOURTH PART OR SHARE *in* FREEHOLD PREMISES; *where the* PURCHASE MONEY *has been paid, but no Conveyance of the Premises has been taken.*

OF A FOURTH PART OR SHARE.

THIS INDENTURE, made the day of , BETWEEN [*vendor*], of the first part; [*purchaser*], of the second part; and [*trustee to bar dower*], of the third part: WHEREAS some time in or about the year , the said [*vendor*] contracted and agreed with the said [*purchaser*], for the absolute sale to him the said [*purchaser*], of the one equal undivided fourth part or share of him the said [*vendor*], of and in the said messuages or tenements, piece or parcel of land or ground, hereditaments, and premises, hereinafter described, and their appurtenances, and the inheritance thereof in fee simple in possession, free from incumbrances (except as hereinafter is mentioned), at or for the price or sum of pounds; *And* soon after the said contract or agreement was entered into, the said purchase money or sum of pounds, was paid by the said [*purchaser*] to the said [*vendor*], as he the said [*vendor*] doth hereby admit and acknowledge, but no conveyance of the said fourth part or share was then or hath since been made to the said [*purchaser*]. AND WHEREAS the said [*purchaser*] is desirous that the said undivided fourth part or share so sold to him as aforesaid, of and in the said messuages or tenements, piece or parcel of land or ground, hereditaments, and premises, hereinafter mentioned, and their appurtenances, should be conveyed to the uses hereinafter declared concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said hereinbefore recited contract or agreement, and in consideration of the said sum of pounds, so paid by the said [*purchaser*] to the said [*vendor*], as hereinbefore is mentioned and recited, (the payment of which said sum of pounds, the said

Parties.

Former contract for purchase of land and premises.

That purchase money was paid, but no conveyance taken.

Desire of the purchaser to have the premises conveyed.

Testatum, whereby in consideration of the money paid,

OF A FOURTH PART OR SHARE.

[*vendor*] doth hereby admit and acknowledge, and of and from the same sum and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators, or assigns:) HE the said [*vendor*], *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm, unto the said [*purchaser*], (in his actual possession, &c. *reference to lease for a year*), and his heirs, ALL THAT one equal undivided fourth part or share now or late of him the said [*vendor*], of and in ALL THAT, &c. (*parcels*); *And* the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of the same fourth part or share; *And* all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of him the said [*vendor*], in, out of, or upon the same fourth part or share, and every part thereof. TO HAVE AND TO HOLD the said one equal undivided fourth part or share hereby granted and released, or intended so to be, of and in the said messuages or tenements, pieces or parcels of land, hereditaments, and premises hereinbefore mentioned, with their appurtenances, *Unto* the said [*purchaser*] and his heirs, to the uses following (that is to say); *To the use* of the said [*purchaser*] and his assigns, during the term of his natural life, &c. (*to uses to bar dower, see ante*, p. 276); *And* the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*purchaser*], his heirs and assigns, in manner following (that is to say); that for and notwithstanding, &c. &c. he the said [*vendor*], at the time of sealing and delivery of these presents, is lawfully and absolutely seised of or well entitled to the said undivided fourth part or share hereby granted or released, or intended so to be, of and in the said messuages or tenements, piece or parcel of land or ground, hereditaments, and premises, hereinbefore mentioned, and their appurtenances, for a good, sure, &c. &c. (*Covenants for title, as ante*, p. 258—263, *using the same expressions in referring to the parcels throughout.*) IN WITNESS, &c.

vendor conveys

a fourth part or share,

and the reversion;

and all the estate.

Habendum to the purchaser,

to uses to bar dower.

Covenant for title.

CONVEYANCE *of an undivided* SEVENTH PART OR SHARE *of* FREEHOLDS, *by* TRUSTEES, *under the Directions contained in a* WILL; *subject to the Payment of a* SEVENTH PART *of so much of an* ANNUITY, *as the Personal Estate of a Testator, on which such Annuity was primarily charged, shall be* DEFICIENT *to satisfy; a Term being limited to Trustees for the* SECURITY *thereof.*

OF A SHARE IN FREEHOLDS, SUBJECT TO THE CONTINGENCY OF THE PAYMENT OF AN ANNUITY.

THIS INDENTURE, made the day of , BETWEEN [*trustees of will*], of &c. of the first part; [*devisee*], of &c. of the second part; and [*trustee to bar dower*], of &c. of the third part. WHEREAS [*testator*], formerly of, &c. was at the time of making his will hereinafter recited, and thenceforth to the time of his decease, seised of or well entitled to the messuage or tenement, hereditaments, and premises hereinafter particularly mentioned and described, and the appurtenances, for an estate of inheritance in fee simple in possession, and being so seised or entitled as aforesaid, did, in such manner as the law requires for rendering valid devises of freehold estates, duly sign and publish his last will and testament in writing, bearing date on or about the day of , and thereby (amongst other things) gave and devised all his real and personal property, whatsoever and wheresoever, with their and every of their appurtenances, to the said [*trustees*], their heirs and assigns, *Upon and for the trusts*, intents, and purposes hereinafter mentioned (that is to say), *Upon trust* to pay to the said [*testator's*] then wife, [M. G.], for and during the term of her natural life, an annuity or yearly sum of pounds, by four equal quarterly payments, on the days and times therein mentioned, without any deduction or abatement whatsoever; *And* subject thereto, *Upon trust*, to convey, assure, and make over an equal share of his said real and personal estates, to each

Parties.

Recital that testator, being seised, devised the premises

to the trustees, upon trust to pay an annuity to his wife:

and subject thereto.

OF A SHARE IN FREEHOLDS, SUBJECT TO THE CONTINGENCY OF THE PAYMENT OF AN ANNUITY.

and every of his children, when, and as they should respectively attain the age of twenty-one years; *And* by his said will the said [*testator*] declared that his personal estate should be the primary fund for the payment of the said annuity so given, as aforesaid, to his said wife; (*Death of testator, without revoking his will, and probate thereof, as* ante, p. 50;) And whereas the said [*testator*] had issue by his said wife, seven children, namely, [E. G.], (*devisee*), [R. G.], [H. G.], [A. G.], [T. G.], and [E. G.]; And whereas the said annuity or yearly sum of pounds, so given and bequeathed to the said [M. G.] (*the wife*), as aforesaid, hath been punctually paid by the said [*trustees*], as they the said [*trustees*] do hereby respectively acknowledge, testify, and declare: And whereas the said [E. G.], (*devisee*), and [R. G], have respectively attained the age of twenty-one years; but the said [H. G.], [A. G.], [T. G.], and [E. G.], are still infants under that age; And whereas, by virtue of the declaration contained in the said will, it is conceived that the said annuity, or yearly sum of pounds, so given and bequeathed to the said [M. G], as aforesaid, is primarily charged upon the personal estate and effects of the said [*testator*], *And* that his said personal estate and effects are much more than sufficient to answer and pay the said annuity, or yearly sum of pounds, but the amount of such personal estate cannot be immediately ascertained; And whereas the said [*devisee*] hath applied to the said [*trustees*], to convey to him the said [*devisee*] the one equal undivided seventh part or share, to which, on attaining his age of twenty-one, he became entitled under, or by virtue of the said recited will of the said [*testator*], of and in the messuage or tenement, hereditaments, and premises thereby given and devised, as aforesaid, and their appurtenances: *And* the said [*trustees*] have agreed to make such conveyance, subject to the provision hereinafter contained, for securing out of the same one-seventh part or share, one equal seventh part or share of so much of the said annuity or yearly sum of pounds, so given and bequeathed to the said [M. G.], as aforesaid, as shall not be paid and satisfied by or out of the personal estate and effects of the said [*testa-*

That the testator had issue seven children.

That the annuity has been punctually paid;

that some of the children have attained 21, and others not; that personal estate is the primary fund;

but its exact amount cannot be immediately ascertained.

Application to the trustees to convey a seventh part,

and agreement by the trustees so to do, subject to a provision for securing the annuity of the wife.

tor] deceased. Now THIS INDENTURE WITNESSETH, that in pursuance and performance of the agreement, and in consideration of the premises, and of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*devisee*] to the said [*trustees*] paid at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged). THEY the said [*trustees*] (*a*), according to their estate, right, title, and interest, under or by virtue of the said recited will of the said [*testator*], and in pursuance and execution of the trusts in the said will, in that behalf declared and contained, and at the request, and by the direction of the said [*devisee*], (testified by his being a party to, and sealing and delivering these presents,) *Have*, and each of them *Hath*, granted, bargained, sold, aliened, released, and confirmed; *And* by these presents *Do*, and each of them *Doth*, grant, bargain, sell, alien, release, and confirm, unto the said [*devisee*], in his actual, &c. (*reference to lease for a year*), and his heirs, ALL that one equal undivided seventh part or share to which the said [*devisee*], on his attaining the age of twenty-one years, became entitled under or by virtue of the said recited will of the said [*testator*], of and in ALL THAT messuage, situate at, &c. in the county of, &c. (*describe the parcels particularly*), *And* (*b*) in all and singular other the hereditaments and real estate (if any), which were so given and devised by the said recited will of the said [*testator*], as hereinbefore is mentioned; *And* also of and in all and singular, &c. (*general words*), *And* the reversion, &c. *And* all the estate, &c.; TO HAVE AND TO HOLD the said one equal undivided seventh part or share, hereby granted and released, or intended so to be, of and in the said messuage or tenement and hereditaments hereinbefore mentioned and described, with the appurtenances, unto the said [*devisee*] and his heirs, *To the uses* hereinafter express-

OF A SHARE IN FREEHOLDS, SUBJECT TO THE CONTINGENCY OF THE PAYMENT OF AN ANNUITY.

Testatum,

whereby trustees convey

a seventh part or share of the premises devised by the will.

Sweeping clause.

Habendum to the devisee,

(*a*) If these qualifying words are employed, there can be no reasonable objection made by trustees to conveying by the word *grant*. See 1 Byth. 426. 452. "Grant."

(*b*) This clause in a conveyance of this nature, should always be inserted. Sweeping clause.

OF A SHARE IN FREEHOLDS, SUBJECT TO THE CONTINGENCY OF THE PAYMENT OF AN ANNUITY.

ed and declared concerning the same (that is to say); *To the use* of the said [*trustees*], their executors, administrators, and assigns, for and during the term of one thousand years, to be computed from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste; nevertheless upon and for the trusts, intents, and purposes hereinafter expressed and declared concerning the same; and from and after the expiration or sooner determination of the said term, and in the mean time subject thereto and to the trusts thereof; *To the use* of the said [*devisee*], and his assigns; (*uses to bar dower, see ante*, 276.) *And it is hereby agreed and declared* between and by the parties hereto, that the said one equal undivided seventh part or share hereby granted and released, or intended so to be, of and in the said messuage or tenement, hereditaments, and premises hereinbefore mentioned and described, and their appurtenances, is hereinbefore limited to the use of the said [*trustees*], their executors, administrators, and assigns, for and during the term of one thousand years as aforesaid, *Upon trust*, that in case the said personal estate and effects shall at any time be found insufficient to answer and pay the said annuity or yearly sum of pounds, so given and bequeathed to the said [M. G.] as hereinbefore is mentioned, then and in such case, *Upon trust* that they the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, by and out of the rents, issues, and profits of the said part or share, and premises, contained in the said term of one thousand years, or by demising, selling, or mortgaging the same part or share and premises, or any part thereof, for all or any part of the same term, or by such other reasonable ways and means as they or he shall think fit; levy and raise so much money as to them or him shall appear necessary for paying and satisfying one equal seventh part or share, of so much of the said annuity or yearly sum of pounds, as shall from time to time remain unpaid after the application to that purpose of the personal estate and effects of the said [*testator*], for the time being, in the hands or power of the said executors, or any of them, and of the costs and expenses

to use of trustees for a term of 1000 years, and subject thereto,

to uses to bar dower.

Declaration that the term of 1000 years is limited

upon trust, that if the personal estate shall prove insufficient, trustees shall raise an equal seventh part of so much of the annuity as the personal estate shall be deficient to satisfy:

which shall have been occasioned by reason of the non-payment thereof; *And* do and shall apply the money so levied and raised, or a competent part thereof, in payment and satisfaction of such proportionate part of the said annuity or yearly sum of pounds, with the costs and expenses as aforesaid accordingly; *And* do and shall pay the residue of the said money (if any), unto the person or persons for the time being entitled to the said part or share and premises comprised in the said term, in remainder or reversion immediately expectant upon the determination thereof. PROVIDED ALWAYS, *and it is hereby agreed and declared* between and by the parties hereto, that the receipt or receipts of the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, for any sum or sums of money payable to them or him under or by virtue of these presents, shall be a sufficient and effectual discharge, or sufficient and effectual discharges for the same respectively, or so much thereof respectively as in such receipt or receipts thereof respectively shall be expressed or acknowledged to be received; *And* that the person or persons to whom the same shall be given, his, her, or their executors or administrators, shall not afterwards be answerable or accountable for the misapplication or nonapplication thereof, or from being obliged to see to the application thereof, or to inquire into the necessity or propriety of any sale or mortgage that may be made or accepted by virtue of these presents. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that the said [*trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, do and shall (subject and without prejudice to the trusts aforesaid), from time to time, permit and suffer the rents, issues, and profits of the said part or share and premises, comprised in the said term of one thousand years, or so much thereof as shall remain after answering the trusts aforesaid, to be received by the person or persons who for the time being shall be entitled to the same part or share and premises, in remainder or reversion, immediately expectant upon the determination of the said term. PROVIDED ALSO, and it is hereby agreed and declared, be-

OF A SHARE IN FREEHOLDS, SUBJECT TO THE CONTINGENCY OF THE PAYMENT OF AN ANNUITY.

and apply the money in payment of a proportionate part of the annuity, and the residue to the persons entitled to the reversion.

Trustees receipts sufficient discharges to purchasers.

Proviso that the trustees shall, subject to the said trusts, permit the reversioner to receive the rents.

Proviso for the cesser of term.

OF A SHARE IN FREEHOLDS, SUBJECT TO THE CONTINGENCY OF THE PAYMENT OF AN ANNUITY.

tween and by the parties hereto, that when the trusts of the said term of one thousand years shall have been performed, or have become unnecessary, or incapable of taking effect, and the costs incurred by the said [*trustees*], and each of them, and each of their executors, administors, or assigns, in the execution of such trusts, shall have been fully paid and satisfied, (and which they are hereby respectively authorised to levy and raise by all or any of the ways or means aforesaid, and to retain the same accordingly,) the said term of one thousand years in the said part or share and premises comprised in the said term of one thousand years, or in so much thereof as shall not have been sold or mortgaged for the purposes aforesaid, shall cease, determine, and be void; *And* each of them the said [*trustees*], so far as relates to his own acts and deeds only, but not further or otherwise, doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*devisee*], his heirs and assigns, that they the said [*trustees*] have not at any time heretofore made, done, committed, executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof, the said one equal undivided seventh part or share of and in the said messuage or tenement, hereditaments, and premises, hereby granted and released, or intended so to be, or any part thereof, is, can, shall, or may be in anywise impeached, charged, affected, or incumbered, except as in the said hereinbefore recited will is mentioned and set forth. IN WITNESS, &c.

Covenant by trustees against incumbrances.

CONVEYANCE, *by Trustees of a Will, of* FOUR FIFTH PARTS *of Premises, with the Benefit of a* COVENANT *to Convey the* OTHER FIFTH, *the Property of a Lunatic; the Covenant being by his* HEIRS AT LAW.

OF FOUR FIFTH PARTS, AND BENEFIT OF COVENANT TO CONVEY THE OTHER FIFTH.

THIS INDENTURE, made the day of , BETWEEN [*vendors*] of, &c. of the first part; [*purchaser*] of, &c. of the second part; and [*trustee to bar dower*] of, &c. of the third part. WHEREAS under or by virtue of the will of [A. C.], late of, &c. deceased, [A. H. C.] of, &c. became entitled to four equal undivided fifth parts or shares, and [J. C.] of, &c. became entitled unto the other equal undivided fifth part or share of and in the messuages or tenements, hereditaments, and premises hereinafter described, and the inheritance thereof in fee simple in possession; AND WHEREAS by indentures of lease and release, bearing date respectively the and days of , the release being made, or expressed to be made, between the said [A. H. C,] and [M.] his wife, of the first part; [S. C.], the eldest brother and heir apparent of the said [J. C.], and [A. C.], another brother of the said [J. C.], of the second part; and [B. B.] and [H. F.] (therein respectively described), of the third part; after reciting that the said [A. H. C.] had contracted with the said [B. B.] and [H. F.], for the absolute sale to them of his said four undivided parts or shares of and in the said messuages or tenements, and hereditaments, therein and hereinafter described, with the appurtenances, at or for the price or sum of pounds, payable as therein is mentioned; *And* that the said [S. C.], [A. H. C.], and [W. C.], had agreed, that whenever a proper title and conveyance could be made by them, or any of them, to and of the other remaining undivided fifth part or share, the same should be sold and conveyed to the said [B. B.] and [H. F.], for the price or sum of pounds, and

Parties.

That under will of A. C., A. H. C. was entitled to four fifths, and J.C., to the other fifth part,

Recital of indentures of lease and release, whereby four fifths of the premises were conveyed to such uses as B. B. and H. F. should appoint, and in default, as tenants in common, and covenant to convey the other fifth when the person entitled thereto, (a lunatic) should die, to B. B. and H. F., as tenants in common, or as they should direct.

OF FOUR FIFTH PARTS, AND BENEFIT OF COVENANT TO CONVEY THE OTHER FIFTH.

that in the mean time, the same should be held and enjoyed by the said [B. B.] and [H. F.], at the yearly rent of pounds; *It was witnessed*, that in consideration of the sum of pounds [*purchase money*] paid by the said [B. B.] and [H. F.], the said [A. H. C.] did grant, release, and confirm, unto the said [B. B.] and [H. F.], their heirs and assigns, ALL those four equal undivided fifth parts or shares (the whole into five equal parts or shares being divided), of him the said [A. H. C.] of and in ALL THAT, &c. (*describe the parcels*), TO HOLD the same four undivided fifth parts or shares, hereditaments, and premises, unto the said [B. B.] and [H. F.], their heirs and assigns, *To the uses* thereinafter declared concerning the same; *And* by the said indenture of release now in recital, the said [A. H. C.] covenanted that he and the said [M.] his wife, would, at the time and in the manner therein mentioned, levy before his majesty's justices of the Court of Common Pleas, at Westminster, a fine, *sur conuzance de droit come ceo*, &c. of the said four equal undivided fifth parts or shares thereby released, with the appurtenances; *And* by the same indenture of release it was agreed and declared, that the grant and release thereinbefore contained, and the fine so covenanted to be levied, as therein mentioned, and all other assurances whatsoever, of the same four undivided fifth parts or shares, with the appurtenances, should operate and enure, *To the uses* thereinafter limited and declared, (that is to say); *To the use* of such person or persons, for such estate or estates, and in such manner, as the said [B. B.] and [H. F] should, by any deed or writing under their respective hands and seals, attested by two or more witnesses, direct or appoint; and in default of such direction or appointment, and subject thereto, *To the use* of the said [B. B.] and [H. F.], and their heirs and assigns for ever, as tenants in common; *And* by the said indenture of release now in recital, the said [S. C.], [A. H. C.], and [W. C.], did severally covenant with the said [B. B.] and [H. F.], their heirs and assigns, that in case the said [S. C.] or his heirs, or the said [A. H. C.] and [W. C.], or either of them, their or either of their heirs, should as the heir or heirs at law of him the said [J. C.], or otherwise, be or become

seised of or well entitled to the said undivided fifth part or share, of and in the said messuages or tenements, hereditaments, and premises, whereof the said four undivided fifth parts or shares were thereby granted and released, they the said [S. C.], [A. H. C.], and [W. C.], or their respective heirs, or such of them as should so become seised of or entitled to the same last mentioned undivided fifth part or share, should and would, within six calendar months next after his or their so becoming seised thereof, or entitled thereto, absolutely sell and dispose of the same unto the said [B. B.] and [H. F.], their heirs or assigns, at or for the price or sum of pounds, and upon payment of the same sum, should and would, at the request, costs, and charges of the said [B. B.] and [H. F.], their respective heirs, appointees, or assigns, or either or any of them, and by such assurance or assurances as they or their counsel should require, well and effectually convey and assure the said one undivided fifth part or share of and in the said messuages or tenements, lands, hereditaments, and premises, therein and hereinbefore mentioned, with the appurtenances, unto and to the use of the said [B. B.] and [H. F.], their heirs, appointees, and assigns, or to such uses as they, or such of them as should so purchase and pay the consideration for the same, should direct. *And* the said [S. C.], [A. H. C.], and [W. C.], so far as they were able, did thereby agree that the said last mentioned fifth part or share should in the mean time, and until such sale and conveyance thereof, be let to, and be held and enjoyed by them the said [B. B.] and [H. F.], their heirs or assigns, at or under the yearly rent or sum of pounds, payable quarterly. AND WHEREAS, pursuant to the covenant for that purpose contained in the said hereinbefore recited indenture of release, a fine *sur conuzance de droit come ceo, &c.* was duly levied in Michaelmas term, in the year of the reign of his present majesty King , of the four undivided fifth parts or shares comprised in and conveyed by the said hereinbefore recited indentures. AND WHEREAS, by indentures of lease and appointment and release, bearing date respectively on or about the and days of , the appointment and release being made or expressed to be made between

OF FOUR FIFTH PARTS, AND BENEFIT OF COVENANT TO CONVEY THE OTHER FIFTH.

That fine was levied in pursuance of covenant.

Indentures of lease and appointment and release, whereby four fifths and the benefit

OF FOUR FIFTH PARTS, AND BENEFIT OF COVENANT TO CONVEY THE OTHER FIFTH.

the said [B. B.] [and H. F.] of the one part, and the said [B. B.] of the other part, the said four undivided fifth parts or shares of and in the said messuages or tenements, lands, hereditaments, and premises, hereinbefore described, and intended to be hereby released, and the benefit of the covenant for the conveyance of the other fifth part or share, contained in the hereinbefore recited indenture of the and days of , with the appurtenances, were (for the considerations in the said indenture of appointment and release mentioned), appointed and conveyed by the said [B. B.] and [H. F.] to the said [B. B.], his heirs and assigns for ever.

of the covenant were appointed to B. B. in fee;

that B. B. made his will, and thereby devised and bequeathed all his property to vendors, whom he appointed executors;

AND WHEREAS the said [B. B.], in such manner as the law requires for rendering valid devises of freehold estates, duly signed and published his last will and testament in writing, bearing date the day of , and thereby gave and bequeathed to his sons, the said [*vendors*] (whom he thereby appointed his executors), *All* his freehold, leasehold, and personal property, of every description, *In trust* for the uses and purposes of his will;

upon trust, to convert the same into money, and discharge his debts.

And the said [*testator*] willed that his said executors and trustees should, as soon as they possibly could to advantage, convert all his property into money, and first discharge all his debts and funeral expenses; *And* the said [*testator*], after giving some pecuniary legacies to the several persons in his said will named, bequeathed the remainder of his property equally amongst his children:

Death of testator, and probate of will.

AND WHEREAS the said [B. B.] departed this life on or about the day of , without having altered or revoked his said will; *And* in the same year the said will was duly proved by the said [*vendors*], in the Prerogative Court of the Archbishop of Canterbury;

That if the whole of the property of B. B. is converted into money, it will not be more than sufficient to pay his debts.

AND WHEREAS it has been lately ascertained, that if the whole of the property of the said [B. B.] were converted into money, it will not be more than sufficient to satisfy all his just debts, and funeral and testamentary expenses;

Contract for sale to purchaser of the four fifth parts, and the benefit of the covenant for the conveyance of the fifth.

AND WHEREAS the said [*vendors*], in pursuance of the trusts of the said will of the said [B. B.], have contracted and agreed with the said [*purchaser*] for the absolute sale to him of the four undivided fifth parts or shares, hereditaments and premises, comprised in and conveyed by the hereinbefore recited indentures of lease and release, of the and

days of , and the appurtenances, free from all incumbrances whatsoever, together with the full and entire benefit of the covenant entered into by the said [S. C.], [A. H. C] and [W. C.], by the said indenture of release, for the sale and conveyance of the other undivided fifth part or share of and in the same hereditaments and premises, in the events and upon the terms therein mentioned, at or for the price or sum of pounds. Now THIS INDENTURE WITNESSETH, that in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendors*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of pounds, the said [*vendors*] do and each of them doth hereby acknowledge, and of and from the same and every part thereof, do and each of them doth hereby release, acquit, and for ever discharge the said [*purchaser*], his heirs, executors, administrators, and assigns;) *They* the said [*vendors*], according to their respective estates, rights, and interests, but not further or otherwise, *Have*, and each of them *Hath* granted, bargained, sold, aliened, released, and confirmed; *And* by these presents *Do*, and each of them *Doth* grant, bargain, sell, alien, release, and confirm, unto the said [*purchaser*], (in his actual possession, &c. *reference to lease for a year*), and his heirs, ALL THOSE the four undivided fifth parts or shares comprised in and conveyed by the hereinbefore recited indentures of lease and release, of the and days of , of and in the said messuages or tenements, lands, hereditaments, and premises, hereinbefore particularly described, with their and every of their appurtenances; *And* the reversion and reversions, remainder and remainders, yearly rents, issues, and profits, of the same undivided parts or shares; *And* the full, entire, and absolute benefit of the covenant entered into by the said [S. C.], [A. H. C.] and [W. C.], by the said recited indenture of release of the day of , for the sale, conveyance, and assurance of the undivided fifth part or share now vested in the said [J. C.] (*the lunatic*), of and in the several messuages or tenements, and hereditaments, in the same indenture of release, and here-

OF FOUR FIFTH PARTS, AND BENEFIT OF COVENANT TO CONVEY THE OTHER FIFTH.

Testatum, whereby, in consideration of purchase money,

vendors convey

to purchaser,

parcels,

and the reversion,

and the full benefit of the covenant,

OF FOUR FIFTH PARTS, AND BENEFIT OF COVENANT TO CONVEY THE OTHER FIFTH.

inbefore described, in the events, and upon the terms therein and hereinbefore mentioned; *And* all the estate, right, title, interest, or inheritance, use, trust, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of them the said [*vendors*], in, to, out of, or upon, the same four undivided fifth parts or shares and premises, hereby released, or intended so to be, and every part thereof. To HAVE AND TO HOLD the said four undivided fifth parts or shares hereby released, or intended so to be, of and in the said messuages or tenements, hereditaments, and premises hereinbefore particularly described, with their and every of their appurtenances, and all and singular other the premises, unto the said [*purchaser*] and his heirs, *To the use* of the said [*purchaser*] and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste; *And* after the determination of that estate, by forfeiture or otherwise, during his lifetime, *To the use* of the said [*trustee to bar dower*], and his assigns, during the life of the said [*purchaser*], *In trust* for him the said [*purchaser*] and his assigns, and to prevent the present or any future wife of the said [*purchaser*] from being entitled to dower in or out of the said premises; *And* after the decease of the said [*purchaser*], *To the use* of the said [*purchaser*], his heirs and assigns for ever; *And* each of them, the said [*vendors*], so far as relates to his own acts and deeds only, but not further or otherwise, *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT and declare, with and to the said [*purchaser*], his heirs and assigns, that they the said [*vendors*] have not at any time heretofore made, done, committed, executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the said undivided parts or shares hereby released, or intended so to be, or any of them, or any part thereof, are, is, can, or shall be in anywise impeached, charged, affected, or incumbered, in title, estate, or otherwise howsoever; *And* each of them the said [*vendors*] *Doth* hereby, for himself respectively, and his respective heirs, executors, and administrators, further covenant, promise, and agree, with

and all the estate.

Habendum,

to the purchaser, to uses to bar dower, for the benefit of purchaser.

Covenant by vendors, against incumbrances;

and for further assurance.

and to the said [*purchaser*], his heirs and assigns, that they the said [*vendors*], and each of them, and each of their heirs, and all other persons having or claiming, or who shall or may hereafter have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, in, to, or out of the said undivided parts or shares hereby released, or intended so to be, or any part thereof, or in, to, or upon the benefit of the covenant so entered into by the said [S. C.], [A. H. C.] and [W. C.], by the hereinbefore recited indenture of release, as aforesaid, by, from, or under, or in trust for the said [*vendors*], or any of them, or their or any of their heirs, or by, from, or under the said [B. B.], the testator, shall and will, at all times hereafter, upon the request, and at the costs and charges of the said [*purchaser*], his heirs or assigns, make, do, and execute, or cause to be made, done, and executed, all such further acts, deeds, conveyances, assurances, matters, and things, for the better and more perfectly conveying and assuring, *To the uses*, and in the manner aforesaid, the said undivided parts or shares, and premises hereinbefore released, or intended so to be, and for granting and assuring to the said [*purchaser*], his heirs and assigns, the full and entire benefit of the covenant so entered into by the said [S. C.], [A. H. C.] and [W. C.], as aforesaid, as by the said [*purchaser*], his heirs or assigns, or his or their counsel in the law, shall be reasonably advised and required; so as the person or persons who shall be required to make or execute such further assurance or assurances, be not compelled, or compellable, for that purpose, to go or travel from his, her, or their usual abode or dwelling. IN WITNESS, &c.

OF FOUR FIFTH PARTS, AND BENEFIT OF COVENANT TO CONVEY THE OTHER FIFTH.

OF FREEHOLDS, WHERE THE PURCHASE MONEY IS SECURED BY A MORTGAGE OF THE PREMISES.

CONVEYANCE *of* FREEHOLDS *to a Purchaser, where the Premises are limited to the* VENDOR *for a* TERM (*a*) *to secure the Payment of the* PURCHASE MONEY, *by way of* MORTGAGE, *and then to Uses to bar Dower in favour of the Purchaser.*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the first part; [*purchaser*] of, &c. of the second part; and [*trustee for purchaser to bar dower*] of, &c. of the third part; (*recite the history of the title according to the facts*). AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the messuages or tenements, lands, and hereditaments hereinafter mentioned and described, and intended to be hereby granted and released, with their appurtenances, and the inheritance thereof in fee simple in possession, free from incumbrances, at and for the price and sum of pounds. AND WHEREAS it hath been agreed, that the payment of the said sum of pounds, half of the said price or sum of pounds, should be postponed to the end of twelve calendar months from the date of these presents, and that the said [*purchaser*] should pay interest for the same in the mean time, after the rate of five pounds for one hundred pounds; *And* that the said messuages or tenements, lands, hereditaments, and premises, so contracted to be purchased as aforesaid, should be conveyed to the use of the said [*vendor*], for the term of years, for securing by way of mortgage the said sum of pounds [*half the pur-*

Contract for purchase.

Agreement that the payment of the purchase money shall be postponed;

and that the premises should be conveyed to vendor for a term of years, for securing the payment of the purchase money.

Another mode.

(*a*) Another mode of effecting the object intended by this conveyance is sometimes adopted. The vendor conveys to the purchaser absolutely: who immediately after reconveys to the vendor in fee by way of mortgage; but this mode is much more inconvenient and expensive.

chase money], and the interest thereof, and subject thereto, to the uses, and in the manner hereinafter mentioned, for the benefit of the said [*purchaser*]: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of

OF FREEHOLDS, WHERE THE PURCHASE MONEY IS SECURED BY A MORTGAGE OF THE PREMISES.

pounds [*half the purchase money*] of lawful money of Great Britain and Ireland, (*payment of consideration and receipt, as* ante, 256); *And* in consideration of the sum of

Testatum, whereby vendor conveys

pounds [*the other half*], which hath been agreed to be given by the said [*purchaser*] to the said [*vendor*], for the purchase of the said hereditaments and premises; *And* for further securing to the said [*vendor*], his executors, administrators, and assigns, the payment of the said sum of

pounds [*half the purchase money*], with interest for the same in the mean time after the rate aforesaid, and in consideration of ten shillings of like lawful money, by the said [*purchaser*] to the said [*vendor*] paid, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), HE the said [*vendor*] *Hath* granted, bargained, sold, aliened, released, and confirmed, and by these presents *Doth*, &c. unto the said [*purchaser*] (*in his actual possession, &c.*) and his heirs, ALL, &c. (*the parcels*), *Together with* all houses, &c. *And* the remainder, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, and hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*purchaser*] and his heirs, *To the uses*, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same (that is to say); *To the use* of the said [*vendor*], his executors, administrators, and assigns, for the term of 1000 years, to commence from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste, but subject to the proviso and condition hereinafter contained for making void the said term; and after the expiration or sooner determination of the said term of one thousand years, and in the mean time subject thereto, to such uses,

Parcels,

Habendum to the purchaser,

to the use of vendor, for 1000 years,

remainder, to uses to bar dower, for the benefit of the purchaser.

OF FREEHOLDS, WHERE THE PURCHASE MONEY IS SECURED BY A MORTGAGE OF THE PREMISES

&c. (*uses to bar dower, see* ante, p. 276). PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that if the said [*purchaser*], his heirs, appointees, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid, to the said [*vendor*], his executors, administrators, and assigns, the sum of pounds [*half the purchase money*] of lawful money of Great Britain and Ireland, and the sum of pounds of like lawful money, as and for one year's interest for the same, at the rate of five pounds for one hundred pounds by the year, making together the sum of pounds, on the day of next ensuing the date of these presents, which will be in the year of our Lord , and the sum of pounds of like lawful money, the residue of the said purchase money, and the sum of pounds of like lawful money, as and for another half year's interest after the rate aforesaid, and without any deduction or abatement whatsoever out of any or either of the said sums or the interest thereof, or any part thereof respectively, for or in respect of any present or future taxes or impositions, or any other matter or thing whatsoever, *Then* and in such case, and immediately after such payment shall be so made as aforesaid, the said term of one thousand years shall absolutely cease, determine, and be void; *And* the said [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*vendor*], his executors, administrators, and assigns, that he the said [*purchaser*], his heirs, appointees, executors, administrators, or assigns, shall and will well and truly pay, or cause to be paid, unto the said [*vendor*], his executors, administrators, or assigns, the said sum of pounds and the interest thereof, in the shares and proportions, and on or at the days and times mentioned in the aforesaid proviso or condition for payment thereof respectively, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents; *And* the said [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*vendor*], his executors, administrators, and assigns, in manner following

Proviso, that if purchaser shall pay to vendor the sum of *l.* and interest, twelve months after the execution of the conveyance, and the sum of *l.* and interest, eighteen months from such time, term shall be void.

Covenant by purchaser, to pay the several sums.

Covenant by purchaser, that if default shall be made in the payment

OF FREEHOLDS WHERE THE PURCHASE MONEY IS SECURED BY A MORTGAGE OF THE PREMISES.

(that is to say); That if default shall be made in the payment of the said sum of pounds [*purchase money*] or the interest thereof respectively, contrary to the aforesaid proviso or condition for payment of the same, and the true intent and meaning of these presents, *Then* and in such case, it shall and may be lawful to and for the said [*vendor*], his heirs, executors, administrators, and assigns, at any time or times thereafter, into and upon the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, to enter; *And* the same from time to time, and at all times, during the continuance of the said term of one thousand years, peaceably and quietly to have, hold, possess, occupy, and enjoy, and receive and take the rents, issues, and profits thereof, to and for his and their own use, without any lawful let, suit, trouble, interruption, or disturbance whatsoever, of, from, or by the said [*purchaser*], his heirs or assigns, or any person or persons whomsoever, having or lawfully or equitably claiming, or who shall or may lawfully or equitably claim, any estate, right, title, or interest, in, to, out of, or upon the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, or any of them, or any part or parts thereof; *And* that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [*purchaser*], his heirs, executors, or administrators, saved, protected, kept harmless and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, mortgages, uses, trusts, wills, entails, annuities, legacies, rent charges, rents seck, and arrears of rent, fines, issues, amerciaments, statutes, recognizances, judgments, executions, extents, seizures, sequestrations, and all other estates, titles, interests, troubles, charges, debts, and incumbrances whatsoever; *And moreover*, that if default shall be made in payment of the said sum of pounds, or the interest thereof, or any part thereof respectively, contrary to the aforesaid proviso or condition for the payment of the same, and the true intent and meaning of these presents,

of the purchase money, it shall be lawful for the vendor to enter upon the premises,

and quietly enjoy the same,

free from incumbrances,

and for further assurance.

OF FREEHOLDS, WHERE THE PURCHASE MONEY IS SECURED BY A MORTGAGE OF THE PREMISES.

then and in such case, the said [*purchaser*] and his heirs, and all and every other person or persons whomsoever having, or lawfully or equitably claiming, or who shall or may have, or lawfully or equitably claim any estate, right, title, or interest in, to, out of, or upon the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with the appurtenances, or any of them, or any part or parts thereof, shall and will from time to time, and at all times thereafter, upon the request of the said [*vendor*], his heirs or assigns, but at the expense of the said [*purchaser*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause to be made, done, or executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely demising and assigning the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, to the said [*vendor*], his executors, administrators, and assigns, for and during all the then residue and remainder of the term of one thousand years, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*vendor*], his heirs and assigns, or by his or their counsel in the law, shall be reasonably devised, advised, or required. PROVIDED ALWAYS, and it is hereby further agreed and declared by and between the parties hereto, that until default shall be made in payment of the said sum of pounds, and the interest thereof, or any part thereof respectively, contrary to the aforesaid proviso or condition for payment of the same, and the true intent and meaning of these presents, it shall and may be lawful to and for the said [*purchaser*], his heirs and assigns, peaceably and quietly to have, hold, occupy, possess, and enjoy the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, with their appurtenances, and receive and take the rents, issues, and profits thereof, to and for his and their own use, without any let, suit, trouble, interruption or disturbance whatso-

Proviso that purchaser shall hold until default.

ever, of or from the said [*vendor*], his heirs or assigns, or of, from, or by any other person or persons whomsoever, lawfully or equitably claiming or to claim by, from, or under, or in trust for him, them, or any of them. (*Covenants for title by vendor as ante*, 259—262). IN WITNESS, &c. (*a*).

OF FREEHOLDS, WHERE THE PURCHASE MONEY IS SECURED BY A MORTGAGE OF THE PREMISES.

On this deed both a conveyance and a mortgage duty are payable. Stamp.

If the premises are of copyhold tenure, and it is desired that a part of the money should be secured by way of mortgage on the premises, the purchaser should covenant that on admittance, he will conditionally surrender the premises to the vendor to secure the purchase money. A form of such conditional surrender will be found under the title MORTGAGE; but as such a transaction is of very rare occurrence, it is not introduced here. The proper clauses for such a conveyance, however, are given in Stewart's Prac. of Conveyancing, Vol. I. 117. 134; and where the property is leasehold, Vol. II. 31. Copyholds.

OF A SLAVE.

FEOFFMENT *of a* NEGRO SLAVE (*a*), *adapted for any of the* WEST INDIA COLONIES *in which the English Law is administered, and Variations for its being either a* MALE *or a* FEMALE.

THIS INDENTURE (*b*), made the day of ,

Parties. BETWEEN [*vendor*] of, &c. of the one part, and [*purcha-*

(*a*) ON SLAVES CONSIDERED AS PROPERTY, AND THE LAWS RELATING TO CONVEYANCES OF THEM.

Division of the subject. It may be useful here to enter at some length into the consideration of the laws relating to slaves, considered as the property of their masters, and of the conveyances by which they may be transferred. And for this purpose, a few general remarks on the subject will first be made. The laws passed in this country relating to them, so far as they concern the subject under consideration, will be then stated; and I shall lastly mention the local enactments of all the West India Islands relating to them, so far as they affect the right of property in them.

Laws of this Country respecting Slaves.

Difficulty in stating the precise time at which slavery commenced, I. It would be difficult to name the particular time when negro slavery first commenced in the West Indies. The laws of the particular islands have recognised it as an existing institution, and have from time to time passed numerous laws to regulate it; but no law can be found in any island for its original establishment.

Slavery cannot exist in this country. Slavery is of such a nature that it cannot be introduced into this country, and can be no further recognised in it than as supported by the positive law of other countries. *Somerset* v. *Stewart*, Lloft, 1. A slave, therefore, when once in England, is free, and cannot be sent out of this kingdom against his will. *Id.*

Slavery is recognized as existing in other countries. Slavery as existing in other countries is, however, clearly recognised, as a contract for the sale of a negro in a country where slavery is tolerated, may be enforced in the courts of this country; but the person of

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Deed Poll. (*b*) Or it may be, and often is, by deed poll; in which case say, "KNOW ALL MEN, that in consideration," *as above.*

ser] of, &c. of the other part, WITNESSETH, that in consideration of the sum of pounds, of lawful money of

OF A SLAVE.

Testatum.

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the slave is safe. *Somerset* v. *Stewart, ubi supra.* And a foreigner who is not prohibited from carrying on the slave trade by the law of his own country, may recover damages in an English court of justice, which may have been sustained by him in respect of a wrongful seizure of his cargo of slaves by a British subject, on board a ship employed in carrying on the African slave trade. *Madrazo* v. *Willis,* 3 B. & A. 353. And see *Forbes* v. *Cochrane,* 3 D. & R. 679. S. C. 2 B. & C. 448. And if a slave return to a colony in which he was formerly a slave, he will again become a slave. *Grace's case,* Hagg. Rep. & Lord Stowell's luminous judgment therein; and this case has since been acted on in the West Indies.

Slavery is peculiar to negroes.

Slavery in the West Indies is peculiar to negroes, or the mixed issue of negroes and Europeans, within such a degree of propinquity to the negro stock as distinguishes them in their features and complexion from the European race. In Jamaica the condition by express enactment ceases to attach upon the issue at the fourth degree of distance from a negro ancestor. Edwards' West Indies, book IV. chap. 1. In other islands the written law is silent on this head; but by established custom, the *quadroons*, or *mestizes*, as they call the second and third degrees, are rarely seen in a state of slavery, and are never employed in any but domestic offices. See Stephen on Slavery, 27.

Slaves are assets for the payment of debts in most of the Colonies.

By the 5 Geo. II. c. 7, it was enacted that the houses, lands, and *negroes*, and other real estates of any debtor in the plantations, should be assets to satisfy debts. But this act, so far as it relates to negroes, is repealed by the 37 Geo. III. c. 119, s. 1. However, in most of the islands, as will be seen hereafter, local enactments have made negroes and slaves assets for the payment of simple contract debts.

By the slave registry act, which is fully stated in 2 Byth. 247, and which is now incorporated in the 5 Geo. IV. c. 113, s. 37, certain provisions are made for the registry of all slaves. And see *post.*

5 Geo. IV. c. 113, s. 2.

By the 5 Geo. IV. c. 113, all the former acts relating to slaves are consolidated; and it will be proper to give the substance of the clauses relating to the present subject.

s. 2. No person shall sell, purchase, or barter slaves, or in any way assist in any persons being dealt with as slaves:

By sec. 2, it is enacted that It shall not be lawful (except in such special cases as are hereinafter mentioned), for any persons to trade in, purchase, sell, or transfer, or to carry away or remove, or to contract for the carrying away or removing of slaves or other persons, as or in order to their being dealt with as slaves; or to import, or to contract for the importing into any place whatsoever, slaves or other persons, as or in order to their being dealt with as slaves; or to ship, embark,

OF A SLAVE.

Consideration, and receipt.

Great Britain and Ireland (*or if it is to be the money of the colony, say,* of lawful money current in the island of),

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receive, detain, or to contract for the shipping, embarking, receiving, or detaining, of any vessel, slaves, or other persons, for the purpose of their being carried away or removed, as or in order to their being dealt with as slaves; or to ship, embark, receive, detain on board, or to contract for the shipping, embarking, receiving, or detaining on board of any ship, vessel, or boat, slaves or other persons, for the purpose of their being imported into any place whatsoever, as or in order to their being dealt with as slaves; or to fit out, despatch, employ, let, or take to freight or on hire, or to contract for the fitting out, despatching, employing, letting, or taking to freight or on hire, any vessel, in order to accomplish any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful; or to lend or become security for the loan, or to contract for the lending, or becoming security for the loan of money, goods, or effects, employed or to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful; or to become guarantee or security, for agents employed or to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful; or in any other manner to engage, or to contract to engage directly or indirectly therein as a partner, agent, or otherwise; or to navigate any vessel for such purposes; or to insure, or to contract for the insuring, of any slaves, or any property, or other subject matter engaged or employed, or intended to be engaged or employed, in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful.

s. 3. All persons who shall sell, purchase, or barter slaves, shall forfeit 100*l.* for every such offence.

Sec. 3. If any person (except in such special cases as are in and by this act permitted) shall deal or trade in, purchase, sell, barter, or transfer, or contract for the dealing or trading in, purchase, sale, barter, or transfer of slaves, or persons intended to be dealt with as slaves, or shall carry away or remove, or contract for the carrying away or removing of slaves, or other persons, as or in order to their being dealt with as slaves, or shall import, or contract for the importing or bringing into any place whatsoever, slaves, or other persons, as or in order to their being dealt with as slaves, or shall ship, receive, or detain on board, or contract for the shipping, receiving, or detaining on board of any vessel, slaves or other persons, for the purpose of their being carried away or removed, as or in order to their being dealt with as slaves; or to ship, tranship, embark, receive, detain, or confine on board, or

by the said [*purchaser*] to the said [*vendor*], in hand well and truly paid, at or immediately before the sealing and delivery of

OF A SLAVE.

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contract for the shipping, transhipping, embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves, or other persons, for the purpose of their being imported or brought into any place whatsoever, as or in order to their being dealt with as slaves, then the person so offending, and his procurers, counsellors, aiders, and abettors, shall forfeit and pay for every such offence the sum of one hundred pounds of lawful money of Great Britain, for each and every slave so dealt or traded in, purchased, sold, bartered or transferred, carried away, removed, imported, brought, shipped, transhipped, embarked, received, detained, or confined on board, or so contracted for as aforesaid, the one moiety thereof to the use of his majesty, and the other moiety thereof to the use of any person who shall inform, sue, and prosecute for the same; and all property or pretended property in such slaves or persons as aforesaid, shall also be forfeited, and the said slaves or persons shall and may be seized and prosecuted as hereinafter is mentioned and provided.

s. 13. The act not to extend to the purchasing or bartering for any slave within any Colony.

Sec. 13. Provided that nothing in this act contained shall prevent any persons from dealing or trading in, purchasing, selling, bartering, or transferring, or from the contracting for the dealing or trading in, purchase, sale, barter, or transfer of any slaves or slave lawfully being within any island, colony, dominion, fort, settlement, factory, or territory belonging to or in the possession of his majesty, in case such dealing or trading, purchase, sale, barter, transfer, or contract, shall be made and entered into with the true intent and purpose of employing or working such slave or slaves within such and the same island, colony, dominion, fort, settlement, factory, or territory, in which they, he, or she may lawfully be at the time of the making or entering into any such dealing or trading, purchase, sale, barter, transfer, or contract.

s. 14. The act not to prevent the carrying away any slave coastwise, or to prevent the carrying of slaves from one island to another, if both are under the same government.

Sec. 14. Provided that nothing in this act contained shall prevent any person from carrying away or removing by land or coastwise, or from contracting for the carrying away or removing by land or coastwise, of any slaves, lawfully being in any part of any island, colony, dominion, fort, settlement, factory, or territory, belonging to or in the possession of his majesty, to any other part of the same island, colony, dominion, fort, settlement, factory, or territory. Provided that where two or more islands are comprised in the same colonial government, nothing in this act contained shall prevent, or be construed to prevent any proprietor of slaves lawfully being in any one of such islands, from

OF A SLAVE.

these presents (the receipt of which said sum of pounds he the said [*vendor*] doth hereby admit and ac-

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carrying away or removing such slaves to any other island within the same government, for the purpose of cultivating any estate or plantation belonging to such proprietor himself, provided that such special purpose of the removal shall previously be made to appear to the satisfaction of the governor or lieutenant-governor, or other person having the chief civil command for the time being within such government, who thereupon shall grant a license for such removal, specifying therein the special cause thereof; but before any slave shall, by virtue of such license, be so removed, or embarked on board of any ship or vessel for that purpose, such clearances or permits, and such certificates shall be obtained, as are hereinafter mentioned and directed, in regard to domestic slaves attending on their owner or master, or his family, by sea.

s. 15. No slave (except as aforesaid) to be removed from one island to another after the 31st of July, 1827, unless it shall be for the benefit of slaves.

Sec. 15. Provided that it shall be lawful for his majesty, by any order or orders to be by him from time to time issued with the advice of his privy council, to authorise and permit until the 31st July 1827, and to the end of the next ensuing session of parliament, and no longer, the removal of any slaves from any island in the West Indies belonging to or in the possession of his majesty, to any other island in the West Indies belonging to or in the possession of his majesty, in case it shall be made appear to his majesty and his council, that such removal is essential to the welfare of the slaves proposed to be so removed: provided also that it shall be lawful for his majesty, by any such order or orders as aforesaid, to make and establish such stipulations, conditions, and regulations, for the benefit of such slaves, in the island to which they may be so removed, as to his majesty, with the advice of his council, may seem meet, and to take security in double the value of the slaves so to be removed, (such value to be estimated according to the price of slaves in the island to which such slaves are to be taken) by bond and recognizance to be made and entered into by the person to, or on the application of whom such license may be granted, with at least two sufficient securities for the due and faithful observance and performance of all such stipulations, conditions, and regulations as aforesaid, and all orders in council to be issued as aforesaid, shall be laid before both houses of parliament within six weeks next after the commencement of each session.

s. 16. This act not to prevent transportation of

Sec. 16. Provided that nothing in this act contained shall prevent the transportation to any foreign colony or place of any slave or slaves

knowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge

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that shall have been convicted in any court of record by due course of law, in any present or future British island or colony, of any crime to which the punishment of transportation is or shall be annexed by the law of such island or colony; but in every such case a copy of the judgment or sentence, certified by the court before which the offender was convicted, shall be put on board the ship or vessel in which any such convict shall be transported.

slaves to any foreign colony by way of punishment.

Sec. 17. Provided that nothing in this act contained shall prevent any slave who shall be really and truly the domestic servant of any person residing or being in any island, colony, plantation, or territory, belonging to or under the dominion, or in the possession of his majesty, from attending such his owner or master, or any part of his family, by sea, to any place whatsoever; nevertheless, under the following regulations; that is to say, first, the name and occupation of every such domestic slave shall be inserted in, or indorsed upon the clearance or permit to depart of such ship or vessel, by or in the presence of the collector, comptroller, or other chief officer of the customs of the port or place from which such ship or vessel shall clear outwards on any voyage, who shall, without fee or reward, certify under his hand, that the slave or slaves so embarked or carried, were reported or described to him as domestic servants: secondly, the master or owner of such domestic slave or slaves, shall obtain from the registry of the colony to which the same shall belong, an extract, certified by the registrar thereof, shewing that such domestic slave or slaves has or have been duly entered in the slave registry of the said colony, by their name and description or names and descriptions therein specified, which extract and certificate shall always be on board the ship or vessel in which any such domestic slave or slaves is or are so carried; and upon every such slave or slaves being brought into or landed in any British colony, the extract or certificate of his, her, or their registration, in the colony from which he, she, or they may have come, shall be forthwith produced to the collector or principal officer of the customs, and a copy thereof shall be by him delivered to the registrar of slaves in the colony into which he, she, or they may be brought; and if the domestic slave or slaves shall be again removed from the colony into which they may have been so brought, previous to the next period for making returns of slaves therein, the collector shall, previous to the embarkation of such domestic slave or slaves, return to the party requiring it the ori-

s. 17. Nor to extend to domestic servants accompanying their masters under certain regulations.

OF A SLAVE.

the said [*purchaser*], his heirs, executors, administrators, and assigns), *He* the said [*vendor*] *Hath* granted, aliened, enfeoffed and confirmed, *And* by these presents *Doth* grant, alien, enfeoff, and confirm unto the said [*purchaser*], his

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ginal extract and certificate of registration delivered into his office to be kept on board the ship or vessel in which such domestic slave or slaves may be carried; and if the regulations hereinbefore contained be not complied with, the owners of the said slave or slaves shall forfeit the sum of one hundred pounds for every such slave or slaves so illegally dealt with, and the master or other person having the charge of such ship or vessel, shall in every such case forfeit the sum of one hundred pounds for each and every domestic slave so unlawfully taken on board.

s. 39. Any mortgage or security intended to accomplish what is here prohibited, shall be void.

Sec. 39. Every mortgage, bond, bill, note, or other security, made in, or to accomplish any of the objects, or the contracts in relation to the objects, which objects and contracts have by this act been declared unlawful, shall, except in the case of a *bonâ fide* purchaser, or holder of any such of the said securities as are in their nature negociable, who may have purchased or obtained the same without notice that the same were made or given for such unlawful purposes, be void.

s. 42. And if these regulations are not observed, slaves shall be forfeited; and where there is any fraudulent description, penalty of 100*l.* for every such slave.

Sec. 42. Where any slave or slaves that may be lawfully removed shall be sent, removed, carried, or conveyed, without observing the regulations, or any or either of them, required by this act, such slave or slaves shall be forfeited to his Majesty: and where any slave or slaves shall be found on board, who shall be untruly or fraudulently described in or upon the clearance or permit required by this act, with intent to violate or elude any of the prohibitions or regulations in this act mentioned, the owner, master, or other person by whom, or by whose procurement such slave or slaves shall be so untruly or fraudulently described, with such intent as aforesaid, shall respectively forfeit and pay the sum of one hundred pounds, lawful money of Great Britain, for every such slave or slaves; and also where the nonobservance shall consist in exporting, sending, removing, carrying, or conveying any slave or slaves (not being domestic or mariners, as in the act aforesaid), without such certified copy from the registrar of the colony, as by this act is mentioned, the ship or vessel in which the same shall be so exported, sent, removed, carried, or conveyed, shall be forfeited to his Majesty; and where the non-observance shall consist in embarking or carrying any slave or slaves without such certificate, the master or other person having the charge of the ship or vessel in which the same shall be so embarked and carried, without such certificate as

heirs and assigns, ALL THAT slave called (c), who has been duly registered. *And* the reversion, &c. of the said OF A SLAVE.

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aforesaid, shall forfeit and pay the sum of one hundred pounds, lawful money as aforesaid, for every such slave or slaves.

Laws relating to Slaves in the West Indies.

II. In all the West India Islands, slaves have necessarily been a fertile subject of legislation.

The manner of their sale was as follows:—On their first importation, they were carried on shore from the ship to the market; and were there put up for sale. A price was bid for them; and in some colonies it was enacted, that they were not to be finally knocked down to a purchaser, until they had been set up one hour. On their being knocked down to a purchaser, the possession was immediately delivered to him, and he either paid the purchase money at the time, or, as was more usual, gave a bond or other security for its future payment; but no deed or writing was necessary to this transfer in any of the colonies. If the purchaser did not carry them out of the colony in which they were purchased, but employed them there, they then became either real or personal estate, according to the law of the colony in which they were purchased. See preamble to Barbadoes Act, 8 Car. II. s. 3. Stokes Col. 417. Original method of sale.

In most of the colonies slaves are real estate, as will be seen by the laws stated hereafter; but in almost all of them, they are made assets for the payment of debts; and in some, of legacies also. In some few, slaves are personal estate; and in others, of a mixed nature; and in others, they are in parts annexed to the soil. General laws affecting slaves in the West Indies.

When they are real estate, they must generally be conveyed by deed, or writing, as, in most of the islands, acts similar to the Statute of Frauds have been passed, and the deed or writing must be registered according to the form prescribed by the acts of the different Islands for that purpose; but in Jamaica, although slaves are real estate, no deed is necessary on their sale; but when they are personal estate they are also often mortgaged, demised, and settled, and are included with the lands they cultivate. See Stephen on Slavery, 84. And it has been sometimes contended, that as heir looms, they may be given in remain-

(c) If the slave be a female, say,
"together with the issue and increase of the said slave hereafter to be born." Female.
but this is not necessary. And see note to next precedent.

OF A SLAVE. slave, &c. *And* all the estate, &c. To HAVE AND TO
Habendum. HOLD the said slave and premises hereby enfeoffed, or

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der, though ordinary chattels cannot; "but the contrary," says Mr. Stephen, "has been decided, and is, I conceive, the law."

In some colonies, where slaves are personal estate, they cannot be transferred without writing, which must be registered. See Stokes, 418.

When they are real estate, they are subject to all its incidents: wives will be dowable of them, and they can, in general, be only recoverable by an action of ejectment*. Shep. Prac. St. Vin. 69. And they may of course be entailed, mortgaged, or leased, and are susceptible of all the modifications of other real estate.

Registry. In all the West India Islands, public registries of deeds are established, in which all deeds relating to negroes must be registered.

Dower. In some Islands dower in slaves may be barred by a simple alienation by the husband. In others, it is necessary that a fine, or what is equivalent thereto, should be levied. See title FINE.

Local laws respecting slaves.

Local Laws of the different Islands respecting Slaves.

III. The peculiar laws of each Island will now be mentioned. The reader will find them at length in the Collection of the laws of the West India Islands, compiled by Mr. Howard; a work which will be found useful by those who have no access to the printed collections of the Acts.

Jamaica. JAMAICA.—In this island slaves are real estate, but no deed or writing is now necessary for the transfer of slaves. The clerk of the peace, and if none, the clerks of the vestry of each parish, shall keep a book, in which the residents of the parish (not being married women) may enter all slaves sold; and this registry shall be as valid as a recorded conveyance. 50 Geo. III. c. 21. But no person unlawfully imported, after the 19th of Dec. 1816, shall be bought or sold, and no property to any person therein shall accrue or vest in any person whomsoever, but all instruments purporting to pass the same shall be void. 57 Geo. III. c. 18.

By the 50th Geo. III. c. 21, all slaves, and the issue of slaves born in the possession of tenant in tail after possibility of issue extinct, or

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* In Jamaica the remedy is by an action of replevin. See 23 Geo. III. c. 13.

intended so to be, with the appurtenances, unto the said [*purchaser*] and his heirs, *To the use* of the said [*pur-* OF A SLAVE.

tenant for life or for years, shall go over to the remainder-man, on the determination of the particular estate. 50 Geo. III. c. 21.

In Jamaica slaves are, by a late act, made assets for the payment of debts and legacies; but only so many slaves shall be sold as shall be sufficient to discharge the debts and legacies, which the deceased's personal estate cannot pay; and the residue shall continue real estate, and descend accordingly. 50 Geo. III. c. 21. s. 1. And by the same act, s. 4, slaves assigned for dower are liable, proportionably with those descending, to the payment of debts; but they are not liable for legacies; and the husband may, in his lifetime, completely bar all right to dower, by a simple alienation of his slaves.

Seven years quiet possession of slaves, purchased of the provost marshal, under an official sale, will be a good title thereto against every body but infants, married women, and persons of unsound mind, claiming within five years after their disability shall cease, and absentees claiming within five years after* the sale, and except against reversioners, or remainder-men, claiming within five years after the accruer of their title. 23 Geo. III. c. 13.

By the 2d Geo. III. c. 28, gifts to negroes of real or personal estate, without any consideration, are void, with some minute exceptions, mentioned in the act; but by a very late act, 6 Geo. IV. c. 19, legacies to slaves of personal estate are made valid. Gifts to negroes.

Barbadoes.—In this island, slaves are real estate. Contracts for slaves must be in writing, and be signed by the party to be charged by them, or his agent, lawfully authorized. 2 Geo. III. s. 1. And all conveyances of estates in slaves, not reduced into writing, and signed by the parties making the same, or their agents, lawfully authorized, will operate only as estates at will. 2 Geo. III. s. 1. Nor can any estate in slaves be surrendered or assigned, or any trust be declared thereof, except by writing signed by the person making the same. 2 Geo. III. s. 1 & 8. *Barbadoes.*

All slaves are made chattels for the payment of debts, and may be sued for by action personal; but for all other purposes, are declared to be real estate. 12 Car. II. s. 1. And where any person dies seised of any slaves, his executors, administrators, or trustees, shall be entitled to the possession thereof, on behalf of persons having right thereto,

* This seems to put absentees in a worse condition than persons in the island, as these last have seven years in which to make their claim. Absentees.

OF A SLAVE.

Warranty.

chaser], his heirs and assigns for ever. *And* he (*c*) the said [*purchaser*] hath hereby granted for himself, his

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till such title be settled; but such executors, administrators, or trustees, will be accountable for the profits made by them. 8 Ann. s. 23.

Persons who have been in quiet possession of slaves for five years, shall have a good title thereto, except against persons labouring under disabilities, and absentees, who shall have two years more after their respective disabilities shall cease. 8 Ann. s. 27. And see 1 Howard's Laws of the Colonies, 118, where another statute of limitation is mensioned, (6 Geo. IV.) but is not stated at length.

Conveyances of slaves did not at one time require enrolment; see 8 Car. II. s. 2; but this is altered by the 39 Geo. III.; and all deeds for the conveyance and alienation of slaves must now be enrolled.

Granada.

GRANADA.—Slaves are real estate, and descend accordingly, and widows are dowable thereout; and this is the same, whether the owner possessed them *together with lands*, or alone. 7 Geo. III. and 10 Geo. IV. s. 1. But if executors or administrators make an inventory of slaves and cattle employed on a plantation, if the personal estate is insufficient, the widow shall not be dowable; 10 Geo. III. s. 2; and no widow shall be endowed of any slaves which shall be sold by provost marshal, or under the direction of a court of equity. 10 Geo. III. s. 3.

Persons having undisturbed possession for seven years before Dec. 1819, or continuing in such possession seven years from the first possession of the same, shall have an estate in fee, except against claimants not labouring under disabilities, or being absent from the island. 59 Geo. III.

Dominica.

DOMINICA.—The laws of this island do not contain any provision for making negroes real estate; and from the provisions for the sale of negroes under executions, contained in 43 Geo. III., it would appear that they are *personal estate.*

Tobago.

TOBAGO.—Slaves are declared to be *real estate*, and shall descend accordingly, and widows to be dowable thereout; and this whether they are attached to the estate, or not. 8 Geo. III. s. 2. All conveyances of slaves are to be recorded in the same manner as deeds concerning lands. s. 3.

Bahamas.

BAHAMAS.—In the Bahamas, slaves are personal estate, as may be

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Covenants for title.

(*c*) Or there may be the usual covenants for title, which see, *ante;* but a warranty is, I believe, more usual. See another form of warranty, *ante*, 324.

heirs, executors, administrators, and assigns, that he the said [*vendor*] and his heirs, the said slave and premises

OF A SLAVE.

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seen from the expression used concerning them in 2 Geo. IV. c. 1; and see 2 Byth. by Stewart, 226.

Husband and wife, and their children, or the children of either of them, being slaves, and belonging to the same owner, shall be transferred or sold together, and no executor shall give his assent to any bequest which shall tend to separate them.

Bermudas.

Bermudas.—In the Bermudas, slaves are real estate; see 22 Geo. III. s. 1; and see 2 Byth. by Stew. 226. In these islands it is to be remarked, that no provision similar to the statute of frauds has been enacted.

Antigua.

Antigua.—The laws of this island which relate to slaves, are already given at great length in Mr. Bythewood's note, Vol. 2, 213. It will be sufficient to observe, that slaves are real estate in Antigua. See 2 Byth. 219. 223.

St. Vincent.

St. Vincent.—No writing is necessary touching any bargain for any *new* slave or slaves, which may hereafter be imported and sold in a public store, as merchandize. 10 Geo. III. s. 28. This act can only be serviceable at present in the way of title, the slave trade being abolished.

Slaves are made real estate, and shall descend accordingly, and widows shall be endowed thereof; but if the personal estate is deficient, they are made assets for payment of debts. 7 Geo. III. s. 1 and 2. This act is incorporated in the 1 Geo. IV. s. 1.

Montserrat.

Montserrat.—By the 26th Geo. III. s. 1. slaves are recognized as personal estate; and it is recited that, as such, they are conveyed without deed or writing; and for prevention thereof, (which words, it is presumed, must relate to the mode of conveyance) estates in slaves, not put in writing, and signed by the party creating the same, or his agent, shall be void, except leases for three years; and no interest in slaves shall be assigned, except by writing, signed by the party making the same, or his agent; and see 28 Geo. II. s. 1, where slaves are also recognized as personalty. But newly imported slaves may be transferred without writing. 26 Geo. II. s. 4. By the 4th Ann, slaves in all the Caribbee islands were made real estate; but the customs of each island were expressly preserved in the prior act, passed 7th June, 1705, although that of *Nevis*, where slaves are

OF A SLAVE.

hereby enfeoffed or intended so to be, unto the said [*purchaser*], his heirs and assigns, against him the said [*ven-*

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personalty, is alone adverted to; and the subsequent acts, stated above, have clearly made slaves personal estate in this island.

St. Kitts.

ST. KITTS.—In St. Kitts slaves are personal estate; see 2 Byth. 225; but there is no law of the island to this effect.

Virgin Islands.

VIRGIN ISLANDS.—In these islands slaves would seem to be *real* estate, by the general laws made for the whole of the Leeward islands, to which these islands belong; see 2 Byth. 223; but *quære*, however, how far these laws, as in the adjoining islands of St Kitts, Nevis, and Montserrat, have been altered by long established custom. There is no express enactment, making them either real or personal estate.

Trinidad.

TRINIDAD.—By a proclamation made on the 19th of June, 1813, it was declared that this colony should be governed by its ancient laws and institutions, which are properly the Spanish; but which, I am given to understand, are derived from many other sources, and consist more of customs peculiar to the country, than any fixed code of laws.

By the first section of the proclamation of the governor, issued in Feb. 1814, it would seem that slaves were considered to be personal estate, as it directs that all deeds, contracts, mortgages, and leases, and every other instrument in writing, except wills, by which any interests in any *real* or immoveable property shall or may be passed in any manner whatsoever, or by which any slave or slaves shall be mortgaged, or otherwise incumbered, shall be drawn by an advocate of the island; and in section 9, it is ordered, that all deeds and other instruments which shall be made out of the island, "and which shall relate to or concern the selling, alienating, transferring, mortgaging, or otherwise disposing of any *real* property, *or the mortgaging of any personal* property, shall be authenticated and registered in the same manner as deeds executed on the island." And by an order in council, made on the 6th of April, 1818, reciting, that it is expedient to remove all doubts which may arise respecting the valid execution or registration of deeds, and to make further provision for the security and rights of mortgagees, and of the purchases of *real property* within the island, and that an abstract entry of deeds containing a mortgage or charge on real property, as required by the 10th book of the Novissima Recopilacion of Castile, is no longer requisite, by reason of the establishment of an office for the registry of deeds, in which the deposit of all public acts and instruments, as well of mortgages as otherwise, afford full

dor] his heirs and assigns, and against all and every other person or persons whomsoever, shall and will warrant, and for ever defend. (*d*) IN WITNESS, &c. OF A SLAVE.

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notice of the nature of all such charges, mortgages, and securities, *on real estate* AND *property in slaves*, to parties interested therein, It is ordered, that the secretary of the island shall keep three books, for keeping and receiving deeds, wills, and mortgages, made in or out of the island. And by the order of the King in council, dated the 5th of August, 1822, it is ordered, that execution may be issued against sugar, cocoa, coffee, or other estate in Trinidad, or against any parts thereof, whether they consist of SLAVES, *machinery*, *utensils*, or any other description of property found thereon at the time of the execution.

It may perhaps, therefore, be laid down, that in this large and important island, slaves are *personal* estate. See, however, Shep. Prac. 69, where it is stated, that on some estates they are annexed to the soil. By an order in council, dated the 10th of March, 1824, if a slave shall be sold under an order of any court in the island, who shall have a real or a reputed husband or wife, or a child under the age of 16, the husband, wife, or child shall not be sold separately, but together in one lot, to one purchaser; s. 23.

ST. LUCIA.—In this island there are now two descriptions of slaves,— plantation slaves, and personal slaves. See Order in council, 24th Sept. 1814; but the distinction is made by this order, and does not seem to relate to any variety in the nature of slaves, as regards the laws of *St. Lucia.*

(*d*) As to stamping a deed to be executed in the colonies, see 1 Byth. by Stewart, 3. Ed. n.; and to the cases there cited, add *Holman* v. *Johnson*, Cowp. 243. *James* v. *Catherwood*, 3 Dow. & Ry. 190. Stamp.

In some of the colonies, as in Antigua, the registering a deed in the registry office, is equivalent to livery of seisin. Stokes, 411, 2 Byth. 221, 231; and by the laws of that island, says Mr. Stokes, the party must acknowledge such deed before the register in person, or by a letter of attorney inserted in the deed, must empower some person or persons to acknowledge it for him. But this is incorrect, as in this island, as well as in most of the West India islands, an affidavit proving the execution of the conveyance, is sufficient for the purpose of having it registered. See 2 Byth. 230. 232. 238. Livery of seisin.

In Jamaica, Barbadoes, and St. Vincent, livery of seisin is not necessary to a feoffment, if it is executed in these islands.

property, or the right of ownership in them. I have not been able to discover, with certainty, whether they are real or personal property in St. Lucia; but from the above-mentioned order it is evident they may be granted for life or for years; and they are, throughout this order, treated as *real estate*.

Demerara and Berbice.

DEMERARA AND BERBICE.—I have not been able to ascertain whether slaves are real or personal estate in these colonies, which are governed according to the Dutch law; but I am induced to conclude that they are *real estate*.

For further information respecting slaves, see titles MANUMISSION and MORTGAGES; and all information concerning the modes of executing and registering deeds affecting property in the colonies, and of barring dower, entails, and remainders therein, will be given under the titles FINES, LETTER OF ATTORNEY, MEMORIAL, and RECOVERIES, to which they more properly belong; and all other important matters, which concern the laws of property in the colonies, will be found in other portions of this work; and see INDEX, word COLONIES.

CONVEYANCE *of a* PLANTATION *and* SLAVES *situate in the Island of Jamaica, by the* HEIR AT LAW *of an* INTESTATE, *on whom they had descended; and Release by* WIDOW, *who was entitled to* DOWER (*a*) *out of the Premises.* OF A PLANTATION AND SLAVES.

THIS INDENTURE, made the day of , BETWEEN [*widow of intestate*] of, &c. of the first part; [*vendor*] of, &c. of the second part; [*purchaser*] of, &c. of the third part; and [*trustee to bar dower*] of, &c. of the Parties.

(*a*) The wife, unless her right is altered by some provision before marriage, becomes entitled, on surviving her husband, to an estate for life in a third part of all his estates of inheritance, of which he was solely seised during the coverture, and which any issue of the marriage might have inherited. Litt. s. 36-53. Therefore, if her issue be not capable of inheriting an estate tail of which her husband is seised, she is not entitled to dower out of it. Litt. 35. But it is not necessary to a title of dower, that the husband should be actually seised; a seisin in law, at any time during marriage, is sufficient. Co. Litt. 31 a. The widow has a legal title to dower, on the death of her husband, but she is not entitled to enter upon this estate, until it has been assigned to her. Co. Litt. 34 a. 2 Scho. and Lef. 391. There is no dower of a trust estate; see 1 Byth. 201; and the wife of a mortgagee, although she is entitled to dower at law, would be prevented by equity from claiming it. *Nash* v. *Preston*, Cro. Car. 190. *Noel* v. *Javon*, 2 Freem. 43. *Bevant* v. *Pope*, 71; and *Hinton* v. *Hinton*, 2 Ves. 633. A wife is dowable of all mines which had been opened during her husband's lifetime, and of which he was seised in fee or in tail; but not of any mines which were not opened in his lifetime. *Stoughton* v. *Leigh*, 1 Taunt. 402. And if, before the title to dower attached, the husband had given any one an option of purchasing the estate, the exercise of that option, at any time afterwards, will defeat the title, by converting the estate into personalty. *Townley* v. *Bedwell*, 14 Ves. 591; and see 7 Ves. 436, at the bottom. And the seisin must be of the entire inheritance; and therefore a seisin of a remainder or reversion in fee, Dower. Of what estates it may be had.

OF A PLANTATION AND SLAVES.

Seisin of intestate of plantation and slaves,

fourth part. WHEREAS [*intestate*] late of the parish of , in the county of , in the island of Jamaica, was at the time of his death hereinafter mentioned, seised or well entitled for an estate in fee simple in possession, of or to divers messuages or tenements, pieces or parcels of land, negroes, slaves, hereditaments,

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expectant on an estate for life or greater estate, will give no title of dower to the wife. Co. Litt. 32 a. *Darcy* v. *Blake*, 2 Scho. and Lef. 387; and if the husband is seised of the estate for life, as well as the estate in reversion or remainder, if another *freehold* estate is interposed between them, no right of dower will attach. *Duncombe* v. *Duncombe*, 3 Lev. 137. *Doe* v. *Jones*, 1 B. and C. 238; and on this principle, the usual limitations to bar dower are founded, as by them a freehold estate in remainder is given to the trustee, to take effect on the forfeiture of the husband's estate for life.

Usual limitation to bar dower.

If the husband, previous to the marriage, has mortgaged the property for a term of years, and the mortgage is not paid off, the widow's right to dower will not attach to the reversion till the expiration of the term. But if the mortgage is paid off, the widow will be entitled in equity, though not at law, to the removal of the term, as against the heir or devisee of the husband. *Hitchin* v. *Hitchin*, Prec. Cha. 133. *Ward* v. *Dudley*, Prec. Cha. 241.

What seisin necessary in the husband.

A dry unbeneficial seisin of an estate in the husband, as the momentary seisin of a releasee to uses, will give no title to dower to the wife. Co. Litt. 31 b. *Dixon* v. *Harrison*, Vaugh. 41. *Sneyd* v. *Sneyd*, 1 Atk. 442. But a beneficial seisin, even for an instant, is sufficient to give a title; as if the husband die immediately after becoming seised of the property. *Broughton* v. *Randall*, Noy, 64. Cro. Eliz. 503; and see Fearne Cont. Rem. 7th edit. Pref. vi.

Where dower may be defeated by the determination of husband's estate.

Where the estate of the husband determines at his death, as if the husband be donee in tail, and die without issue, not having barred the entail, here there is a natural determination of his estate; but the widow will still be entitled to dower out of it. *Chaplin* v. *Chaplin*, 3 P. Wms. 230. For the dower estate of the wife is held to be a continuation of the husband's estate. 6 Co. 41. Co. Litt. 41 a.

But when the husband's estate is determined by a condition annexed to the grant, or a title paramount, and does not run to its full duration, then the title to dower will be defeated; because, if the donor enters for breach of the condition, he is in of his original estate, and therefore shall defeat all charges or incumbrances made or occasioned by the husband. Co. Litt. 202 b. Butl. n. (4.)

and premises, situate and being in the said county of , in the said island of Jamaica, and (amongst other things) of or to the plantation, negroes, slaves, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the ap-

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Thus also, if the husband's estate was determined by conditional limitation: as if tenant in tail levies a fine to A. in fee, A. takes a base fee, determinable on the grantor's death without issue, and a title of dower attaches on the estate; now if the tenant in tail should die without issue, "it seems clear," says Mr. Preston, "that the remainderman may enter upon the lands, and hold them discharged of the dower of the wife." 3 Prest. Conv. 173; and see 10 Co. 95 b.

In analogy to these principles, it has been the opinion of most conveyancers, that dower would be defeated by an executory devise, determining the estate of the husband. See Co. Litt. 241 a. 18th edit. Butl. n. (4.) and the cases there cited. It may now, however, be laid down, that an executory devise of this nature *will not defeat* the dower of the wife.

Buckworth v. *Thirkwell.*

The first case in which this rule was attempted to be established, was *Buckworth* v. *Thirkwell*, 3 Bos. and Pull. 652, n. 1 Collect. Jurid. 332. In this case, Joseph Sutton, the testator, devised his estate to trustees, upon trust, to pay the rents and profits thereof for the maintenance and education of Mary Barrs, till she arrived at twenty-one, or was married. "And from and after the said Mary Barrs should have attained the age of twenty-one years, or should be married, he gave and devised all the said land and premises to the said Mary Barrs, her heirs and assigns for ever; but in case the said Mary Barrs should happen to die before she arrived at the age of twenty-one years, and without having issue of her body, lawfully begotten; then, from and after the decease of the said Mary Barrs, without issue, as aforesaid, he gave and devised all his said estates unto his grandson Walter, for life," with several remainders over. Mary Barrs married Solomon Hansard, and had issue a son, who died in her life; and afterwards Mary Barrs died, under 21. In this case, the court were unanimously of opinion, that on the decease of Mary Barrs, the husband became entitled, by the curtesy, to the estates for his life; and that, subject thereto, the devisees over became entitled to them, by way of executory devise. The ground upon which the court appears to have formed their opinion is, an analogy they supposed it to bear to the case of estates in fee simple conditional, and estates tail; in both of which dower and curtesy continue, after failure of the issue; and in both

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and his death. That letters of administration were granted to vendor.

purtenances: And whereas the said [*intestate*] departed this life on or about the day of , intestate: And whereas letters of administration of all and singular the goods and chattels, rights, credits, and effects of the said [*intestate*], were duly granted on the day of , by the Court of Ordinary in the said island of

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of which the wife's being seised of a fee, which the issue might by possibility inherit, entitles the husband to curtesy. See another report of *Buckworth* v. *Thirkwell*, 10 J. B. Moo. 235, from a note of Mr. Justice Burrough. The case was also recognised by Mr. Justice Holroyd, in *Doe* dem. *Pratt* v. *Timins*, 1 B. & A. 549.

This case was a good deal questioned at the time; but in the late case of *Moody* v. *King*, 10 J. B. Moo. 230, the subject came again directly before the court of Common Pleas, and *Buckworth* v. *Thirkwell* was confirmed, and acted on.

Moody v. *King*. The circumstances were shortly these. A testator being seised in fee, devised to his son W. F., and his heirs for ever, all his houses and lands, charged with an annuity to the testator's wife for life; and if W. F. should have no children, child, or issue, the said premises, on the decease of W. F., should "become the property of the heir at law," subject to such legacies as W. F. should give to the younger branches of the family. W. F. took possession of the lands, on the death of the testator, and died without issue, leaving his widow surviving. She afterwards married, and she and her husband then filed a bill, praying a discovery, and an account of the rents and profits of the estates, and to have dower assigned to her; and a case was then sent to the C. P. for the opinion of that court, whether the wife was entitled to dower. The case was then fully argued, and all the cases on the subject were cited.

Best, C. J. Lord C. J. *Best* said: "As Lord Alvanley, in *Doe* v. *Hutton*, [3 Bos. and Pull. 653.] doubted upon this case, *(Buckworth* v. *Thirkwell,)* I shall pause before we certify our opinion to the Vice Chancellor. But my present impression is, that the decision in that case is not only good law, but founded on good sense. Lord Mansfield there drew a distinction between estates by condition, and conditional limitations. Here the husband had an estate of inheritance, which could not have been defeated until nine months after her [the wife's] death; and if he had left a child surviving, such child must have inherited the estate in fee simple, in which case the executory devise would be at an end. This therefore bears a strong analogy to the case of an estate tail; and the wife is not to be restricted from dower, from the mere circumstance

Jamaica, unto the said [*vendor*] his eldest son, and [B. B.] his second son: AND WHEREAS upon the decease of the said [*intestate*], the said plantation, negroes, slaves, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, together with all other his real estate,

OL A PLANTATION AND SLAVES.

That premises descended upon the heir.

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that a tenant in tail may convert the estate into a fee simple. The four judges of the C. P. afterwards certified in favour of the title to dower. See also 2 Bing. 447. S. C.

It is certainly the duty of conveyancers to endeavour to point out the fallacy of any one case decided in the courts, contrary to their opinions and practice; but when a decision of this nature, notwithstanding the reasoning opposed to it, is again distinctly recognized and confirmed by a court of law, it is the duty of conveyancers to submit. It may now be regarded, therefore, as settled law, that if the husband's estate be defeated by an executory devise, the wife's dower will not also be defeated.

Bill for dower.

The usual mode for obtaining an assignment of dower, is by filing a bill in equity, setting forth the circumstances, and praying an assignment thereof; and in assigning dower, it is usual to give the widow an account of mesne profits from the death of her husband. *Oliver* v. *Richardson*, 9 Ves. 222. *Mundy* v. *Mundy*, 2 Ves. jun. 128.

Dower must always be barred on a purchase.

In a very late case in Ireland, *Power* v. *Shiel*, 1 Beatt. 48, an application for an injunction, to restrain a widow from proceeding at law to enforce her dower out of lands of inheritance purchased from her husband, was very properly refused by Lord Chancellor *Hart*, the purchaser having negligently omitted to take a fine, and not having used common diligence to ascertain and preserve evidence that a jointure had been settled on her. And it was laid down, that whoever purchases an estate of inheritance from a married man, has notice, that the vendor's wife may have a claim to dower; but the husband may protect his heir or vendee, either by a contract with the wife before marriage, or by substituting some provision for her in lieu of dower, which may induce her to disclaim it. Any person purchasing from a husband, will be protected in equity from the wife's claim to dower, if there be a contract, although it may not amount to a legal release of the right. But a purchaser, to entitle himself to such protection, must not only show that the wife made some contract on the subject of her dower, but must prove the contents of that contract; he cannot be compelled to complete his purchase, unless he has either a fine from her, or such evidence of the contract as will enable him at any time to lay his hand on it, to repel

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descended to or devolved upon the said [*vendor*] as his heir at law, subject only to the right and title to dower of the said [*widow*], the widow of the said intestate: AND WHEREAS the said [*purchaser*] hath contracted with the said [*vendor*], for the absolute purchase of the said plantation, negroes, slaves, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, and the inheritance thereof in fee simple, with the appurtenances, free from incumbrances, at or for the

subject to the title of dower.

Contract for purchase.

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any future claim of this right. The husband, as vendor, cannot deprive him of it; he is either entitled to a fine or the muniment, that will thus protect him. But loose allegations by the purchaser, of inquiring from the wife, at the time of the purchase, whether she claimed dower, is not sufficient to protect him; nor is she to be ousted of her legal estate in power, by an allegation that there had been some contract before marriage, but that it was afterwards lost. Secondary evidence, as a substitution for the original deed, must clearly show what was the compensation given in lieu of dower, and where the widow may resort to lay her hand on it; on no other terms would a court of equity be justified in restraining her writ of dower. If a purchaser can affect a widow with the fraudulent spoliation, or suppression, after her husband's death, of a deed settling jointure, that would raise an equity against her claim to dower; and even a clear and strong case of fraud, during her husband's lifetime, would affect her: but it must be shewn that she had a will of her own to exercise.

But the widow having, in her answer to the original bill, admitted that her husband, previous to the marriage, had executed an instrument settling an amount of 150*l.* on her, in case she married him, together with a bond as a collateral security, but of which she did not know the contents, was restrained from proceeding to execute her writ of dower, until she had answered the amended bill.

This case is of some importance, not as establishing any new principle, but as a judicial recognition of some of the rules which constantly guide the practice of conveyancers.

Dower of rare occurrence.

An estate in dower, however, is now comparatively of rare occurrence in England. It is the constant practice of conveyancers to convey an estate to the usual uses to bar dower, and thus to exclude it; and this mode is now generally adopted, although no instructions are given to that effect. As to dower generally, see Mr. Park's Treatise, which contains much useful information. As to jointures, see 2 Byth. 488. n. (*a*)

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price or sum of pounds: AND WHEREAS it hath been agreed that the sum of pounds, should be paid unto the said [*widow*], in lieu, and full and complete satisfaction of all the right and title to dower of her the said [*widow*], in, to, or out of the said plantation, negroes, slaves, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, as the said [*widow*] doth hereby admit and acknowledge; *And* that she the said [*widow*], should execute the release of the same hereditaments and premises hereinafter contained; *And* that the sum of pounds, the residue of the said purchase money, or sum of pounds, should be paid to the said [*vendor*], as he the said [*vendor*] doth hereby admit and acknowledge: AND WHEREAS the said [*purchaser*] is desirous that the same plantation, negroes, slaves, hereditaments, and premises, should be conveyed and limited to the uses hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*widow*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, and of the sum of pounds, by the said [*purchaser*] to the said [*vendor*] in hand well and truly paid, at the same time, (the receipt of which said several sums of pounds and pounds, the said [*widow*] and [*vendor*] do hereby respectively admit and acknowledge, and of and from the same and every part thereof, do hereby respectively acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators, and assigns:) SHE the said [*widow*], *Hath* remised, released, and acquitted, *And* by these presents *Doth* remise, release, and acquit; *And* the said [*vendor*] *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*] and his heirs, ALL (*a*) THAT coffee plantation or estate, called

Agreement that part of the purchase-money should be paid to widow, in lieu of her right of dower,

and that the residue should be paid to vendor.

Desire of purchaser to have the premises conveyed.

Testatum, whereby, in consideration of ——*l.*, paid to widow,

and of —— *l.* to vendor,

(and receipt thereof,)

widow and vendor convey to purchaser

the coffee plantation

(*a*) See a description of the parcels in a conveyance of a sugar plantation. 2 Byth. 190.

Sugar plantation.

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, situate in the said parish of , in the said county of , in the said island of Jamaica, with the messuages, buildings, erections, houses, storehouses, and kilns erected and built, standing, or being in or upon the said plantation, land, ground, hereditaments, and premises,

and negroes, and every part thereof, with their and every of their appurtenances, *And* all negroes and slaves thereon, or belonging thereto, the registered names and descriptions of which said negroes and slaves are set forth in the schedule (*b*) hereunder written or hereunto annexed, according to the latest registration or corrected registration of such negroes and slaves, in the office of the registrar of slaves; *And* also the issue and progeny of the females (*c*) of the said

General words. negroes and slaves; *Together* with all coppers (*d*), stews, stills, still-heads, worms, worm-tubs, coolers, cisterns,

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Lease for a year unnecessary in most of the West India islands.

(*b*) In the island of Jamaica, no lease for a year is necessary, by a local statute; a reference to it is therefore useless. See 2 Byth. 222. and 3 Byth. Stew. edit. 165. And in Barbadoes, St. Vincent, Antigua, Dominica (if the deed be made in the island), and it is believed in St. Christopher's, the Bahamas, and the Bermudas, the same law prevails. But in Demerara, where the Dutch law still prevails, and in Trinidad, where the Spanish law is administered, the law is different, as no such assurance as the lease and release is there known. In these islands, the respective forms prescribed by the local laws must be observed. See 2 Byth. by Stewart, 224, Ed. note. The lease for a year is also unnecessary in Lower Canada, New Brunswick, and Nova Scotia, in all of which the English law is administered; but in Lower Canada, where the French law is administered, it is different.

List of slaves required by 59 Geo. 3, c. 120, confirmed by 5 Geo. 4, c. 113. s. 37.

(*c*) By the 59 Geo. III. c. 120, s. 9, no conveyance of slaves shall be valid, unless the registered name and description, or names and descriptions of such slave or slaves shall be set forth in such deed, or in some schedule thereon indorsed, or thereto annexed, according to the latest registration or corrected registration of such slave or slaves in the office of the registrar of slaves. And this act is confirmed by and incorporated in the 5 Geo. IV. c. 113, s. 37. And see 2 Byth. 247.

Issue of female slaves.

The rule adopted in the West Indies as to slaves is, that *partus sequitur ventrem*, so that only the issue of the female slaves can be conveyed.

(*d*) In many of the islands plantation tools are made real estate. Where this is not the case, or where slaves are personal estate, or where

OF A PLANTATION AND SLAVES.

plantation tools, utensils, implements, and all other tools, goods, and chattels whatsoever, to the said plantation, negroes, slaves, hereditaments, and premises, every or any of them, or any part thereof, belonging or in anywise appertaining, or with them, or any of them used, occupied, possessed, or enjoyed; *And* the reversion, &c.; *And* all the estate, &c. To HAVE AND TO HOLD the said plantation, negroes, slaves, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*] and his heirs, to such uses, &c. (*uses to bar dower, see ante*, p. 276); *And* SHE the said [*widow*], according to her right and interest, so far as relates to her own acts and deeds, but not further or otherwise, *Doth* hereby for herself, her heirs, executors, administrators, and assigns, (*covenant against incumbrances, as ante*, p. 293); *And* HE the said [*vendor*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, in manner following (that is to say); that for and notwithstanding any act, matter, or thing, by them the said [*widow*] and [*vendor*], or the said [*intestate*], made, done, omitted, committed, or knowingly or willingly suffered to the contrary, HE the said [*vendor*], is at the time of the sealing and delivering of these presents, lawfully, rightfully, and absolutely seised of and in, or well and sufficiently entitled to the said

Habendum to the purchaser, to uses to bar dower.

Covenant by vendor for title.

Seised in fee.

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there is any doubt on the subject, the following *habendum* should be introduced instead of the above form:

Habendums for real and personal estate.

"To HAVE AND TO HOLD such part of the said plantation, negroes, slaves, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, as is real estate, with the appurtenances, unto the said [*purchaser*] and his heirs, to such uses, &c. (*uses to bar dower, ante*, 276); AND TO HAVE, HOLD, RECEIVE, AND TAKE such part of the same plantation, negroes, slaves, and premises as is personal estate, with the appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, for his and their absolute use and benefit."

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plantation, negroes, slaves, hereditaments, and premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, for a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee simple in possession, without any manner of condition, trust, power of revocation, equity of redemption, remainder, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, charge, defeat, incumber, revoke, or make void the same: *And* that for and notwithstanding any such act, deed, matter, or thing as aforesaid, He the said [*vendor*] now hath in himself good right, full power, and lawful and absolute authority, to grant, bargain, sell, release, and convey the said plantation, negroes, slaves, hereditaments, and premises hereby granted and released, or intended so to be, with the appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents: *And* that it shall and may be lawful for the said [*purchaser*], his heirs and assigns, from time to time and at all times hereafter, peaceably and quietly to enter into, hold, occupy, possess, and enjoy the said plantation, negroes, slaves, hereditaments, and premises hereby granted and released, or intended so to be, with their appurtenances; *And* to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, denial, claim, demand, interruption, or eviction whatsoever, of or by them the said [*widow*] or [*vendor*], or either of them, their heirs, or either of their heirs, or of, from, or by any person or persons whomsoever, lawfully or equitably claiming or to claim, by, from, or under, or in trust for them or any of them, or the said [*intestate*]; *And* that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [*widow*] and [*vendor*], or one of them, their or one their heirs, executors, and administrators respectively, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures,

That vendor has good right to convey.

and for quiet enjoyment,

free from incumbrances.

OF A PLANTATION AND SLAVES.

dowers, and all rights and titles of dower, uses, trusts, entails, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent, annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had and made, executed, occasioned, and suffered, by them the said [*widow*] and [*vendor*], or either of them, or by any other person or persons lawfully or equitably claiming or to claim, by, from, or under, or in trust for them or either of them: *And further*, that the said [*widow*] and [*vendor*] respectively, and their respective heirs, and all and every other person or persons whomsoever, lawfully and rightfully claiming or to claim any estate, right, title, interest, inheritance, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said plantation, negroes, slaves, hereditaments, and premises hereby granted and released, or intended so to be, with the appurtenances, or any of them or any part thereof, by, from, through, or under, or in trust for them or either of them, or their or either of their heirs, or the said [*intestate*], shall and will, from time to time and at all times hereafter, upon every reasonable request to be made for that purpose, by, and at the proper costs and charges of the said [*purchaser*], his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, things, devices, conveyances and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely granting, conveying, and assuring of the said plantation, negroes, slaves, hereditaments, and premises hereby granted and released, or intended so to be, with the appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as he the said [*purchaser*], his heirs or assigns, or his or their counsel in the law, shall be reasonably advised, devised, and required, so

and for further assurance.

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as no such further assurance or assurances contain or imply any further or other covenant or warranty than against the person or persons who shall be required to make or execute the same, and his or their heirs, executors, and administrators' acts and deeds, and so as the party or parties who shall be required to make such further assurance or assurances, be not compelled nor compellable for the making thereof, to go or travel from his, her, or their usual place or respective places of abode. IN WITNESS, &c.

SCHEDULE, &c.

OF LAND ALLOTTED UNDER AN INCLOSURE ACT.

CONVEYANCE *of a* PIECE *of* LAND *allotted under an* INCLOSURE ACT (*a*), *by a* TRUSTEE *for Sale of* TWO THIRDS *and the* CELLES QUE TRUST *of such Two Thirds, and the* PERSON *absolutely entitled to the* OTHER THIRD, *to a Purchaser, to Uses to bar* DOWER: *qualified Covenant against Incumbrances: qualified Covenants for Title.* (*A very concise Form.*)

Parties.

THIS INDENTURE, made the day of , BETWEEN [*trustee*] of, &c. of the first part; [*celles que*

(*a*) ON INCLOSURES OF COMMON, AND TITLES DERIVED UNDER ACTS OF INCLOSURE.

Rights of Common—Different kinds—Common of Pasture—of four sorts—Common of Estovers—Common of Turbary—Common of Piscary—Approvement—Other Powers of Lord by Custom—How Approvement should be made—Inclosure Acts—41 *Geo. III. c.* 109—1 *and* 2 *Geo. IV. c.* 23—*Persons interested in Division—Commissioners—Award—What a Purchaser will take before its Execution—Allotment—Difficulty where an Allotment is made in respect of Lands held by different Titles—It seems a Bill in Equity may be maintained to remedy the Defect—Other Remedies—Exchanges under Inclosure Acts—What Title may be*

trust] of, &c. of the second part; [*other vendor*] of, &c. of the third part; [*trustee for vendor*] of, &c. of the fourth part; [*purchaser*] of, &c. of the fifth part; and [*trustee for*

OF LAND ALLOTTED UNDER AN INCLOSURE ACT.

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required by a Purchaser of the exchanged Lands—Tithes—On what a Purchaser may insist on a Purchase of an Allotment—Land Tax—Expenses—Miscellaneous Matters.—Title to Waste Lands, and Opinion thereon.

Inclosures of common and waste lands have become very frequent of late years, and numerous titles are now derived through acts for this purpose, or are in some degree connected with them. There is still, however, very considerable difficulty and obscurity resting on the subject. No excuse, therefore, need be made for stating the principal points relating to acts of inclosure.

And first, rights of common, and what they consist of, must be briefly considered.

Rights of common.

A right of common is an incorporeal hereditament or profit, which a man has in the land of another, to feed his beasts, to dig turf, or the like. Finch's law, 122. Co. Litt. 122 a. The ownership of the soil itself is generally in the lord, or sometimes in several lords of the manor, and the use in him or them and the commoners; but it may also exist in the persons entitled to the common right, who may have, from time immemorial, agreed to use the common for their mutual benefit.

Different kinds.

Rights of common are of very ancient origin, and are founded on prescription. They are usually divided into, I. *Common of Pasture.*—II. *Common of Estovers.*—III. *Common of Turbary.*—IV. *Common of Piscary.*

Common of pasture.

I. Common of pasture is the right of a man to feed his beasts on a certain extent of land; and is either appendant, appurtenant, because of vicinage, or in gross. 1. *Common appendant* exists only by prescription, which presupposes a grant, and therefore must have existed beyond time of memory. Co. Litt. 121 b. 1 Bulst. 18. It cannot, therefore, be created at this day. 26 Hen. VIII. c. 4. It is always annexed to lands; 2 Inst. 85. 4 Co. 37 a; and can never belong to a house; 4 Co. 37 a; and originally it was only annexed to *arable* land; 2 Inst. 85; but now it may be appendant to pasture, or meadow, or wood land, or even to a manor farm, as the land will be presumed to have been originally arable; 4 Co. 37 a. 1 Lev. 253. 5 T. R. 49; or to a cottage, as, according to 31 Eliz. (since repealed by 15 G. III. c. 32,) a cottage must have four acres of land appended to it. *Gunston* v. *Selby*, 2 Ld. Raym. 1015. Salk. 169. 6 Mod. 114. Holt. 174. S. C. Corporations are entitled to this right of common; *Mellor* v. *Walker*, 2 Saund. 1; and copyholders as well as freeholders. *Fisher* v. *Wren*,

Appendant.

Lease and release, whereby two thirds of the premises, therein described, subject to a life estate,

purchaser] of, &c. gentleman, of the sixth part. WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of ,

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3 Mod. 250. *Crowther* v. *Oldfield*, 2 Ld. Raym. 1225. Salk. 364. S. C.

Appurtenant.

2. *Common appurtenant* may either be acquired by grant, or prescription; *Mollitor* v. *Trevilian*, Skin. 137. 2 Show. 328; and may be created at this day; *Cowlam* v. *Slack*, 15 East, 108; and may be severed from the land to which it is appurtenant; *Laniel* v. *Harslop*, 3 Keb. 66; and may be appurtenant to a house or lands. *Scoles* v. *Hargreaves*, 5 T. R. 46. *Bunn* v. *Charnir*, 5 Taunt. 244.

Because of vicinage.

3. *Common because of vicinage*, is when the inhabitants of two townships, lying contiguous to each other, have from time immemorial intercommoned with each other. Co. Litt. 122 a. 2 Bl. Com. 33.*

4. *Common in gross* is such as is neither appendant nor appurtenant to land, but is annexed to a man's person, being granted to him and his heirs by deed; or it may be claimed by prescription. 2 Bl. Com. 34.

Common of estovers.

II. *Common of Estovers* is the right of taking necessary house-bote, plough-bote, and hedge-bote, in another person's hedges and woods. It must be claimed in respect of ancient premises. *Selby* v. *Robinson*, 2 T. R. 758.

Common of turbary.

III. *Common of Turbary* is a right of cutting turf upon another's land, and this right can only be appendant to a house, and not to land; 4 Co. 37 a. Noy. 145; and the turf must be consumed on the premises. *Hayward* v. *Cunnington*, 1 Lev. 231. 1 Sid. 354. S. C. And see *Wilson* v. *Willes*, 3 Smith, 167.

Common of piscary.

IV. *Common of Piscary* is a right to fish in a river running through the soil of another. 2 Bl. Com. 34.

Beside these, there are rights of common of digging for coals, minerals, stones, and the like.

Approvement.

Approvement.—Any person who is seised in fee of a waste within a manor, may approve, leaving a sufficiency of common, although he be not the lord. *Glover* v. *Lane*, 3 T. R. 445. But since the introduction of inclosure acts, this power is rarely exercised.

Exercised at common law.

From what was said by Mr. Justice Lawrence, in *Grant* v. *Gunner*, 1 Taunt. 447, it would appear that the lord had the power to approve at common law; and see 2 Inst. 85, *sed quære*. And by 20 Hen. III. s. 4. (the statute of *Merton*,) it was enacted, that when any of the

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* As to common in a forest, see Woolrych on Rights of Common, 104.

and made between [*celles que trust*] of the first part; [*trustee*] of the second part; [W. R.] of the third part; and the said [*trustee*] and [W. R.] of the fourth

OF LAND ALLOTTED UNDER AN INCLOSURE ACT.

are conveyed to trustee and W. R.,

tenants of a manor brought an assise of novel disseisin for their common of pasture, if they had as much pasture as sufficed their tenements, together with free ingress and regress into the pasture, they should be contented therewith; and they of whom it was complained should get quit of as much as they had made their lands, woods, and pastures. And by Stat. West. 2. 13 Ed. I. c. 46, after reciting, that because in the statute of Merton no mention was made of approvements between neighbour and neighbour, and that, by reason of a doubt whether that statute applied only to lord and tenant, many lords of wastes, woods, and pastures had been hindered from making approvements by the contradiction of neighbours, though they had sufficient pasture, it was enacted, that the statute of Merton should extend not only to the lords' tenants, but also to neighbours; which words were intended to include those dwelling in another town. 2 Inst. 474. And these statutes are confirmed by 3 & 4 Ed. VI. c. 3. And further, as to who may approve, see *Clarkson* v. *Woodhouse*, 5 T. R. 412. Common appendant and appurtenant may certainly be approved, whether certain or uncertain. 2 Inst. 86. Leon. 41. And common by reason of vicinage, *Harding* v. *Brook*, 3 Keb. 34. *Deane* v. *Clayton*, 1 J. B. Moo. 214. Common in gross is not within the statute relating to approvement. 2 Inst. 86. *Rex* v. *Inhabitants of St. Brivills*, 1 Keb. 830. *Weekly* v. *Wildman*, 1 Ld. Raym. 407. 1 Taunt. 449. *Sed vid.* 5 Vin. Ab. 7. Nor common of turbary, or of estovers. Co. Litt. 87. *Grant* v. *Gunner*, 1 Taunt. 435. And see *Duberly* v. *Page*, 2 T. R. 391. A lord who is in by wrong may approve. Clayt. 38.

What may be approved.

The person approving must take care to separate the part inclosed from the remainder of the waste by some visible boundary, so as to prevent the commoners' cattle from straying into the approved ground. Gaps in this inclosure, however, will not prevent the land thus severed from being considered as approved. See Co. Litt. 87. Litt. Rep. 267. Woolrych's Rights of Common, 182.

What should be done on approvement.

Where there is a strip of land lying between the highway and the adjoining inclosure, the presumption is that the strip, as well as the soil of the highway, *ad filum viæ*, belongs to the owner of the inclosure. But if such strip of land communicate with open commons, or other large portions of land, the presumption is rebutted, or at least considerably lessened; for the presumption will then be, that the strip belongs to the large portions of land to which it adjoins. *Grose* v.

As to strips of land adjoining inclosures.

OF LAND ALLOTTED UNDER AN INCLOSURE ACT.

part; two undivided equal third parts or shares of and in the said piece or parcel of land and hereditaments hereinafter described, and intended to be hereby granted and

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West, 7 Taunt. 39. But waste lands on the sides, and the soil to the middle of the highway, belong to the owners of the adjoining freehold; and the rule is equally applicable, whether the occupier be a freeholder, copyholder, or leaseholder. *Doe* v. *Pearsey*, 7 B. & C. 304.

Jury may be summoned by lord.

With a view of insuring to the lords of manors the privilege of superintending the prosperity of the wastes over which they are the superiors, they have a right, by custom, of summoning a jury to inquire of any misfeasance, and to pass such by-laws, and make such salutary regulations as they shall think fit, for the preservation of the rights of common. See Cro. Car. 497. 498. Woolrych, 189.

Other powers of the lord by custom.

The lord, when authorized by special custom, had many other powers, sanctioned by immemorial custom. Thus he may grant part of the common soil for building. *Falkland* v. *Hemmett*; cit. 5 T. R. 417. He may also dig clay-pits in the waste, or empower others to do so, although he does not leave sufficient herbage for the commoners. *Bateson* v. *Green*, 5 T. R. 411.

Although the lord should grant his license with the consent of the homage, yet this circumstance does not abridge the lord's common law right of inclosing without such consent. 2 T. R. 391-2. But if, unsanctioned by special custom, the lord incloses, and does not leave sufficient common, the commoners may break down the inclosures, and put in their cattle, although the land be ploughed and sown. 2 Inst. 88. 1 Roll. Abr. 406. 2 Leon. 202, 203. *Arlett* v. *Ellis*, 7 B. & C. 346. But in the case of *Sandgrove* v. *Kirby*, 6 T. R. 485, Lord Kenyon said, that if the commoner is only abridged of his right, he cannot abate.

A custom for the lord to inclose the waste without limit or restriction, is bad; but a custom to inclose a part of the manor, leaving a sufficiency of common, is good. *Arlett* v. *Ellis*, 7 B. & C. 346.

Custom for commoners to inclose.

A custom for the owners of commonable or open fields to inclose against each other, would be good. *Barber* v. *Dixon*, Cro. Car. 432. W. Jones, 375. 2 Mod. 104. But if two commoners agree to inclose a common, a party not privy to the agreement, but having an interest in the premises, will not be bound. Chan. Rep. 48. But where an inclosure will be for the public good, and no solid objection can be made against it, equity will enforce an agreement for the purpose. Woolrych, 392. And where a common has been inclosed for thirty years, equity will presume the inclosure to have been made with

released, with the appurtenances, were, together with other hereditaments, (for the considerations in the said indenture of release mentioned,) conveyed by the said [*trustee*],

OF LAND ALLOTTED UNDER AN INCLOSURE ACT.

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consent of all parties interested, and will not throw it open; *Sitway* v. *Compton*, 1 Vern. 32; and twenty years adverse possession of a waste inclosed, is a bar to the entry of a commoner. *Hawke* v. *Bacon*, 2 Taunt. 156. And if the lord or his steward were privy to the encroachment, it will be presumed to have been made with the lord's license; and until such license be revoked, or notice given for the encroachment to be abandoned, the lord cannot maintain an action of ejectment. *Doe* v. *Wilson*, 11 East, 56. And a custom of inclosing for the tenants in a manor does not abridge the common law right of the lord to inclose. *Duberley* v. *Page*, 3 T. R. 292 n.

Much benefit having been found to result from approvement, applications to parliament for inclosure acts have been very frequent within the last sixty years. By these acts the lord and the commoners are mutually benefited, and the legislature, after numerous partial* enactments, determined, for the purpose of reducing the expense of passing such acts, to consolidate all the usual clauses inserted in local acts into one general act. This act was the 41st Geo. III. c. 109, the provisions of which, as amended by the 1st and 2d Geo. IV. c. 23, are briefly as follows:

Inclosure acts.

41 Geo. III. c. 109.

Note.—"Commissioner" is named throughout both acts, as enjoying the same powers as "commissioners," though the latter expression, as more comprehensive, is here adopted. By s. 44, and 1 and 2 Geo. IV. c. 23, s. 5, the provisions of these acts are only so far binding in each case as they shall not otherwise be provided for in any local inclosure acts hereafter to be passed. And *note*, that inclosure acts are not to be considered as mere private acts. *Reddell* v. *White*, 1 Anst. 281.

Sect. 1, prescribes the form of the oath of the commissioners; and directs that it shall be enrolled with their award.

Sect. 2, provides for the case of commissioners declining to act; and disables them from purchasing any lands in the parish for five years after the date and execution of the award.

Sect. 3, relates to the fixing of the boundaries of the parish; gives a right of appeal to the quarter sessions, and declares the judgment of the sessions to be final.

Sect. 4, 5, provide for the making a survey, admeasurement, plan, and valuation of the lands to be inclosed.

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* See 29 Geo. II. c. 36, amended by 13 Geo. III. c. 81.

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[*celles que trust*], and [W. R.], to the said [*trustee*] and [W. R.], their heirs and assigns, (but subject nevertheless to the estate therein of [M. H.] widow, for the term of

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Sect. 6, requires claimants to allotments to put in their claims in writing, separately stating their rights, estates, and interests; and whether freehold or copyhold: in default of which they are to be excluded from all title to allotments. And it is declared, that all objections to such claims must be presented at a meeting appointed for the purpose, or they shall not be received, except for some special cause.

Sect. 7: The commissioners are not authorized to determine disputes touching title to lands, but shall set out the allotments to the persons in actual possession of the lands, in lieu or right whereof the allotments shall be made; and no suit, touching such title, shall delay the division or inclosure.

Sect. 8, 9, 10, 11, relate to the disposition of roads; the hearing of objections; the stopping of old roads; the prevention of persons from erecting gates across a road, or planting trees on the sides, at less than fifty yards; the appointment of surveyors, and the levying of rates; and the declaration of the rights of the proprietors of the adjoining lands to the grass and herbage of the roads; the inclosure of all roads not set out; and the alteration of the turnpike roads.

Sect. 12, 13, direct the commissioners to pay regard to the situation and convenience of the houses or homesteads of the proprietors, as to the quantity and quality of their allotments; and enable them to set out small parcels in a ring fence, to be stocked and depastured in common, by small proprietors.

Sect. 14, declares that the several shares, when allotted, shall be in full satisfaction of all previous rights: and immediately after the making of the allotments and the execution of the award, or from some other time, to be ascertained by a notice fixed on the church door, all rights of common, &c. shall be extinguished.

Sect. 15, empowers the commissioners to make exchanges, or the bishops and patrons of livings to consent to such exchanges; which exchanges must be specified in the award, and are then declared to be for ever valid and effectual.

Sect. 16, enables commissioners to make allotments to joint tenants and tenants in common, in severalty.

Sect. 17, allows two calendar months for the proprietors to intimate their consent to their allotments; in default of which intimation, their rights to the allotments to be forfeited.

her life,) *Upon trust* that they, and the survivor of them, should, as soon as conveniently might be, sell and dispose of the same parts or shares either by public auction or private contract, and for such price or prices as could be

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Upon trust to sell.

Sect. 18, enables guardians, husbands, trustees, and committees of incapacitated persons and tenants for life, to accept allotments; and in case of non-acceptance, allows twelve calendar months for acceptance, after incapacities removed.

Sect. 19, allows allotments to be ditched and fenced off before the execution of the award.

Sect. 20, provides that trees, &c. growing on allotments shall belong to the allottees, they making compensation to the owners.

Sect. 21, 22, 23, provide for those cases where money is to be paid for the purchase or exchange of any land, &c. under the provisions of the general or particular inclosure act, which money ought to be laid out in other purchases, to be settled to the same uses. A proportion of the expenses of the act is first to be deducted by the commissioners, and the surplus, if amounting to 200*l.* to be laid out in land, and in the mean time paid into the bank, under the direction of the court of Chancery; if less than 200*l.* and more than 20*l.*, to be paid into the bank, or to two trustees, at the option of the person entitled to the rents of the lands, &c.; if less than 20*l.* to be paid to the person entitled to the rents.

Sect. 24, provides that in case of default in the acceptance of allotments, according to the 17th sect. the commissioners may fence and let such allotments, and receive the rents, till payment of the proportion of the expenses of the act.

Sect. 25, 26, 27, 28, enable the allottees, during the first seven years after the allotment, to erect fences on the outside of the ditches bounding their allotments, for the preservation of the quickset; but enact, that no standing fence shall be destroyed before the award, without the consent of the commissioners; and that fences, assigned as boundaries, should be left; and provide for the maintenance of the mounds instead of fences, and for the punishment of persons damaging fences.

Sect. 29, prescribes the method of raising the money to defray the expenses of the act, and in default of contribution, by distress and entry, and perception of rent.

Sect. 30, enables particular tenants to charge allotments with their expenses under the inclosure.

Sect. 31, enables the commissioners to sell and allot part of the

OF LAND ALLOTTED UNDER AN INCLOSURE ACT.

reasonably obtained for the same: *And* by the said indenture of release now in recital, it was declared that the receipts in writing of the said [*trustee*] and [W. R.], or the survivor of them, or the heirs or assigns of such survivor, should be an effectual discharge for the mo-

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allotments of feoffees of charity or school lands, for raising the portion of the expenses of the inclosure, to be contributed by such feoffees.

Sect. 32, prescribes the mode of selling allotments, for payment of expenses.

Sect. 33, 34, relate to the means of enforcing the attendance of witnesses to give evidence.

Sect. 35, requires the award to be engrossed or written on parchment, and read and executed at a special general meeting convened for the purpose, and to be proclaimed on the next Sunday in the parish church, after which it is declared to be complete. It is afterwards to be enrolled at one of the courts at Westminster, or with the clerk of the peace for the county; and a copy of the award, or of any part of it, signed by the proper officer, shall be admitted as legal evidence.

Sect. 36, 37, relate to the mode of keeping the commissioners' accounts, and to the deposit of monies in their hands.

Sect. 38, enables the rector or vicar of the parish, with the consent of the bishop and patron, to lease the allotment for twenty-one years; provided that no lessee be made dispunishable of waste, and that, in every such lease, a clause of re-entry be inserted, in case of nonpayment of rent; and that there be a counterpart of every such lease.

Sect. 39, relates to the recovery and application of penalties.

Sect. 40, 41, save the rights of lords of manors, and all other rights, except the rights intended to be barred or extinguished.

Sect. 42, empowers justices to take affidavits.

Sect. 43, declares persons forswearing themselves guilty of perjury.

The schedule of the act contains the form of affidavits, of notices, consents, allegations, and admeasurements.

1 & 2 Geo. IV. c. 23.

The provisions of the 1 & 2 Geo. IV. c. 23, are shortly as follows.

Sect. 1. enables allottees, who have demised the allotments set out to them, to distrain for rent, notwithstanding the award be not executed and completed.

Sect. 2. enables allottees to maintain actions for damage to allotments, and of ejectment for recovering possession, before the execution of the award.

Sect. 3. provides that where leases, granted by incumbents of livings under the general act, shall determine before the effluxion of the term,

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Lease and release, whereby

ney produced by such sale; *And* that the persons or person to whom such receipts should be given, should be discharged from the obligation of seeing to the application of the money therein expressed to be received: AND

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it shall be lawful for them, with the consent of the ordinary and patron, to grant new leases for the remainder of the term, and under the same provisions as the former leases.

The schedule to the act contains the form of an order to enable persons to take possession of their allotments, and cultivate or let the same, before the execution of the award.

Persons interested in the division. The lord.

The persons interested in the division of the common are the lord and the commoners. The lord must prove that he is owner of the soil, *Smith* v. *Smith*, 2 Pri. 101. He may be interested in two ways, as lord of the manor (and as such he is usually allotted one-twentieth of the place to be enclosed); he may also be entitled in respect of any right of common he may claim as belonging to his demesnes which are in the parish; and for this last, although he cannot in strictness claim a right of common in respect of them, yet is entitled to an allotment for his interest. *Arundel* v. *Falmouth*, 2 Mau. & Sel. 440.

A portion of the waste is frequently allotted to be used in common for depasturing cattle, by several small proprietors, in lieu of their allotments; and it seems that in this case the lord will be entitled to the same rights, as if the common had not been inclosed. See *Place* v. *Jackson*, 4 Dow. & Ry. 318; but see *Johnson* v. *Hodgson*, 8 East, 38.

Commoners.

The commoners, on proving that they have exercised their rights in the manor, *Smith* v. *Smith*, 2 Pri. 101, will be entitled to an allotment; and if any commoner has two rights of common appertaining to one estate, situate in *two* manors, he will be entitled to an allotment in respect of each right. *Hollingshed* v. *Walton*, 7 East, 485. But he must make his claim in due time, or, under the 41 Geo. III. c. 109, s. 6, he will be deprived of all benefit under the inclosure. *Doe* v. *Jefferson*, 2 Bing. 118, 9 J. B. Moo. 260. S. C.

Commissioners, their authority.

Commissioners. The authority of a commissioner under an inclosure act, resembles that of an arbitrator, *Calcraft* v. *Roebuck*, 1 Ves. jun. 226; *Featherstone* v. *Cooper*, 9 Ves. 68; and it is equally the duty of a commissioner, as of an arbitrator, to act with impartiality, and not to consider himself as an agent. See 11 Ves. 160, & 2 Byth. 582 n. (*a*). There is this difference between the two offices, that the power of an arbitrator is determined the moment he has made his award, but that that of a commissioner continues until he has fully executed the duty imposed upon him

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WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , the release being made between the said [M. H.] of the first part; the said [*vendor*] of the second part; and the said [*trustee for vendor*] of the third part;

the other third was conveyed to the other vendor, to uses to bar dower.

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by the act; and therefore, although commissioners have executed their award, they may levy a fresh rate upon the proprietor for raising necessary expenses. *Haggerston* v. *Dugmore*, 1 B. & A. 82.

Upon what they are competent to decide.

The decision of commissioners upon a matter coming within their jurisdiction is conclusive, *Earl of Radnor* v. *Reeve*, 2 Bos. and Pull. 391. *Moody* v. *Thurston*, 1 Stra. 304. And they will, after their award has remained undisputed a considerable time, be presumed to have acted correctly. *Williams* v. *East India Company*, 3 East, 192. 2 M. & S. 558. Tidd. Prac. 887. But as the commissioner is expressly directed not to meddle with the title, it has been held, that any act of the commissioner, inconsistent with such direction, is void. *Attorney General* v. *Hotham*, Turn. 219. Nor can they in any respect exceed their authority; but must pursue strictly the powers given to them; and if they are empowered to settle boundaries, and to advertise a description of them, and the boundaries thus settled were to be inserted in the award, and to be then considered conclusive; where the boundaries advertised being different from those inserted in the award, and as the commissioners had not strictly pursued their power, the award was held, in respect of the boundaries, not to be final; *Rex* v. *Inhabitants of Washbrook*, 4 B. & C. 732. 7 Dow. and Ry. 221; and therefore, also, the determination of the commissioners under an inclosure act, as to the boundaries of the parish to be inclosed, is not conclusive as to what were the boundaries *before* their determination. *Rex* v. *Inhabitants of Bury St. Edmunds*, 4 B. & A. 462; and see *Eaton* v. *Bell*, 5 B. & A. 34.

The 15th section of the general act, giving a power to the commissioners to exchange, is not imperative upon them, and they may exercise a discretion thereupon, and need not accept any exchange offered to them, unless they shall consider it just and fair; *Rex* v. *Flockwood Commissioners*, 2 Chitt. 251; and where the commissioners have authority under an inclosure act, to award land in exchange for other land; and also to allot lands to a *purchaser* of the interest of persons entitled to allotments; they may award land, partly in exchange for land, and partly for money, because their authority empowers them to award land in exchange for other land, or for money paid. *Doe dem. Lord Suffield* v. *Preston*, 7 B. & C. 392. 1 Man. and Ry. 713. S. C.

Where three commissioners are appointed, the existence of three is

the other undivided equal third part or share of and in the said piece or parcel of land, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, was (for the considerations in the said indenture of release now in recital

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necessary to the validity of any act under the commission, although the act contain a declaration that the acts of two of them shall be binding; and therefore if one die, the acts of the other two will not be valid. *Doe* v. *Middleton*, 3 Brod. and B. 214. 6 J. B. Moo. 532, S. C.

If commissioners actually violate, neglect, or refuse to do their duty, the Court of King's Bench will grant a *mandamus* against them; and where they have exceeded or mistaken their authority, a bill may be filed against them in equity. *Rex* v. *Flockwood Commissioners*, 2 Chitt. 251. Woolrych on Common, 392. And see further as to the authorities of the commissioners, *Earl of Fulmouth* v. *Richardson*, 3 B. & C. 837. 5 Dow. & Ry. 664. *Eaton* v. *Bell*. 5 B. & A. 34. *Harber* v. *Rand*, 9 Pri. 58. *Rex* v. *Townshend*, 5 B. & A. 420.

Violation of their duty.

Award. No technical words are necessary to the award of the commissioners, *Peck* v. *Clarkson*, 2 Bl. 1318; and the legal title to the land passes by the act, and not by the award, which is only the *evidence* of the title, *Kingsley* v. *Young*, 18 Ves. 207. A power is usually inserted in the local acts (although there is no such provision in the general act), authorizing the proprietors to dispose of their allotments before the execution of the award; and the exercise of this power will, it seems, confer the legal estate on the appointee. *Kingsley* v. *Young*, 17 Ves. 468. 18 Ves. 207. But without such a clause, it is clear that the allottee has only an equitable interest before the execution and proclamation of the award, and that he cannot enforce a specific performance of a contract for the sale of the allotment before the award is perfected. *Cane* v. *Baldwin*, 1 Stark. 65. *Lowndes* v. *Bray*, Sug. Vend. & Pur. 302. *Burroughs* v. *Oakley*, 1 Meriv. 376. But where the local act empowered the owners to sell their interest in the allotments, within three months before the execution of their award, (the commissioners being authorized to allot to the purchasers, who were to hold in such manner as the vendors would have done had there been no sale,) it was held that this power to sell and convey might well be exercised, and the land be enjoyed under it without the legal seisin, and that therefore the legal freehold did not pass until the execution of the award. *Farrer* v. *Billing*, 2 B. & A. 171; *Ellis* v. *Arnison*, 5 B. & A. 47. 3 Dow. & Ry. 27. 1 B. & C. 70. S. C.; *Bendyshe* v. *Pearce*, 4 J. B. Moo. 99. 1 Brod. & Bing. 460.

Award. What passes by it.

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mentioned,) conveyed by the said [M. H.] and [*other vendor*] unto the said [*trustee for vendor*] and his heirs, to such uses and in such manner as the said [*other vendor*] by any deed or deeds, writing or writings, to be executed as therein mentioned, should from time to time

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What a purchaser will take before the execution of the award.

A purchaser, unless the words of the local act are very strong, will only have an equitable estate until the award is executed. And as the equitable interest is liable to be altered, or to have another allotment substituted for it by the commissioners, at any time previous to the execution of the award, *Bendyshe* v. *Pearce, ubi supra;* a purchaser can seldom be recommended to accept an allotment until the award is executed; although this execution is sometimes delayed ten or even twenty years. But where the vendor *can* convey the legal estate before the execution of the award, *Cane* v. *Baldwin,* 1 Stark. 65, a purchaser cannot refuse an acceptance of a title on the ground of the possibility of an alteration being made in the award, as such a risk is inherent to the nature of the property purchased; *Kingsley* v. *Young,* 17 Ves. 468. 18 Ves. 207; but if the vendor can only convey an equitable estate, it would be otherwise.

Stamp.

It has usually been considered in practice, that the award need not be impressed with an *ad valorem* stamp; and this opinion has lately been confirmed. See *Doe dem. Lord Suffield* v. *Preston,* 7 B. & C. 392.

Mistake in award as to tithes.

Where there is a mistake in an award respecting tithes, it will not be a bar to a claim for them by the rector, although he has acquiesced for fifty years in it. The courts of law and equity have at last fully agreed upon this point. *Cooper* v. *Thorpe,* 1 Swanst. 106. 1 Wils. Chan. Rep. 55. 4 B. & C. 36. 6 Dow. & Ry. 31. 2 Russ. 78. 5 Bing. 116.

Allotment, what estate it is.

Allotment.—The estate taken in an allotment is an estate in fee simple, *Doe* v. *Davidson,* 2 Mau. & Sel. 175; *Townley* v. *Gibson,* 2 T. R. 701; even although the allotment is made in respect of copyhold or leasehold lands, see the cases above cited, and *Revell* v. *Jodrell,* 2 T. R. 415; but a clause is usually inserted in local acts, declaring that the allotments made in respect of copyholds shall be of the same tenure. It is usual also to insert a clause, declaring that the allotments shall be subject to the uses and limitations of the lands in respect of which they are allotted; but without this clause, it would seem, that the allotment would in equity, and perhaps at law, be subject to all the estates, charges, and liens, which appertain to the land in respect of

direct and appoint, and in default of and until such direction and appointment, *To the use* of the said [*other vendor*] and his assigns, during his life, without impeachment of waste, with a limitation *To the use* of the said [*trustee for vendor*] and his heirs, during the life of the said [*other*

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which the allotment was made. See 1 Prest. Abs. 87. *Steele* v. *Manns*, 5 B. & A. 22.

Difficulty where an allotment is made in respect of lands held by several titles.

It frequently happens that an allotment is made to one proprietor in respect of several estates held under different titles, without its being stated in respect of what part of the estate the allotment is made. It becomes subject, therefore, to *all* the titles; which occasions the greatest difficulty in practice; for on a sale of any part of the estate, there must be an investigation of all the titles, see 1 Prest. Abs. 88, where the consequences of such an award are forcibly pointed out.

How it may be obviated.

This difficulty may be prevented by the allottees carrying in a distinct description of all the lands for which they claim an allotment, and receiving a separate allotment for each. But if an allotment has already been made to a person, without any distinction of this nature having been made, the parties should file a bill in equity to apportion the allotment according to the several allotments, and the court, it would seem, would direct the master so to apportion them.

It would seem that a bill in equity will lie to apportion the allotments.

Mr. Coventry, in his tract on Inclosures, questions the jurisdiction of a court of equity in this matter, and thinks that a bill could not be maintained for this purpose. See p. 8. 10. Perhaps, however, this opinion cannot be supported even upon the cases cited by him, *Wade* v. *Conyers*, 2 Cox, 360; *Speer* v. *Crawter*, 2 Meriv. 418, opposed as it is by the case of *Agar* v. *Fairfax*, 17 Ves. 533, because equitable relief has always been administered where the principles of law by which ordinary courts are guided give no right, but upon the principles of universal justice the interference of a judicial power is necessary to prevent a wrong. Mitf. 90.

This opinion is strengthened by the late case of *King* v. *Moody*, 2 Sim. & Stu. 579, reported since Mr. Coventry's work was published, where the lord of a manor being seised of it in fee, subject to an executory devise over, purchased an estate partly freehold and partly copyhold, of the manor, and afterwards, under an inclosure act, he carried in two claims, one in respect of the devised, and the other in respect of the purchased estate, and obtained two allotments accordingly. He afterwards died, and the executory devise took effect. It was held that the copyhold part of the purchased estate being extinguished in the manor, passed with it to the executory devisee, who

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vendor], *In trust* for him the said [*other vendor*] and his assigns, with remainder *To the use* of the said [*other vendor*], his heirs and assigns for ever: AND WHEREAS the said [W. R.] departed this life on or about the day

Death of W. R.

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was also entitled to so much of the allotment, obtained in respect of the purchased estate, as was proportionate to the value of the copyhold part; *and it was referred to the master to apportion the said allotment accordingly.*

Perhaps, therefore, it may be laid down, considering the extreme hardship of the case, that where the legal estate is under the controul of the court, and proper conveyances can be directed, a court of equity would entertain a substantive bill to apportion such an allotment*.

Renewed application to the commissioners.

Another mode suggested is, that as the authority of the commissioners, as has been already mentioned, is not determined by the award, *Haggerston* v. *Dugmore*, 1 B. & A. 82; *Rex* v. *Washbrook*, 4 B. & C. 732, an application should be made to them to make a fresh award, and apportion the allotments, although it seems doubtful whether they have the power.

Act of parliament.

The most complete, but at the same time by far the most expensive mode of effecting this object, would be an application for an act of parliament for the purpose.

Exchanges under inclosure acts.

Exchanges under Inclosure Acts.—In most local acts, it is provided that the lands received in exchange shall be affected by the same uses, wills, and settlements, as the lands in respect of which they are exchanged. There is, however, no such clause in the General Inclosure Act.

What title must be required by a purchaser of the exchanged lands.

Where there is no such clause, no prudent conveyancer will recommend a purchase of such lands without seeing abstracts of the titles both of the lands received and given in exchange, as each is liable to be entered upon by the other party on a defect of title in the other lands; although even in this case it certainly is sometimes dispensed with. See 1 Byth. 265 n.

Where there is such a clause, there is a change of land, but not of title, 1 Prest. Ab. 162. And some doubt is entertained in practice, whether in this case a vendor of an allotment of this nature, is bound to furnish an abstract of the title of the lands *given*, as well as that of the lands *received* in exchange. It would seem to be very difficult to contend that an exchange of this nature is not similar to any other ex-

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* That there is no remedy at law to determine the boundaries, see *Cranmer* v. *Pennington*, 5 Taunt. 167.

of , and the said power of sale has therefore survived to the said [*trustee*]: AND WHEREAS the said [M. H.] departed this life on or about the day of : AND WHEREAS the said [*other vendor*] did on the day of , cause (together with other

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Death of tenant for life. That premises were put up to

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change, and it is certainly the practice of many conveyancers to call for abstracts of both titles, and if they can easily be produced, such a demand should unquestionably be complied with. If they cannot easily be produced, or if there has been a long undisturbed possession of the lands received in exchange, as of forty or fifty years, under the Inclosure Act, it may be safe to dispense with the production of the title.

In exchanges under inclosure acts, the estates need not be equal.

Exchanges at common law must be of equal estates, as freehold for freehold, fee simple for fee simple, &c.; but exchanges under an inclosure act are not bound by these rules, and under them freehold may be exchanged for copyhold; a tenant for life may exchange with tenant in fee, &c. if the remainder-man be not injured. *Rex* v. *Flockwood Commissioners*, 2 Chit. Rep. 251; *Doe* v. *Preston*, 7 B. & C. 392.

Where an inclosure act gave the commissioners power to award lands in exchange for others in an adjoining parish, and also to award lands to those who bought them of persons entitled to allotments; it was held that they might award lands given in exchange partly for other lands, and partly for money, and that the award need not have an *ad valorem* stamp upon the money consideration. *Doe dem. Lord Suffield* v. *Preston*, 7 B. & C. 392.

Tithes.

It is usual in inclosure acts to declare that an allotment should be made for the tithes of the whole parish: and it is clear where there is an award to this effect, the tithes will cease for ever, and be extinguished. See 1 Swanst. 106. 1 Wils. Chan. Rep. 55. But where there was a mistake in the award, it seems that the right to the tithes would not be barred even by a *laches* on the part of the rector, of fifty years. See *Cooper* v. *Thorne*, 1 Swanst. 106; 1 Wils. Chan. Rep. 55; 4 B. & C. 36; 6 Dow. & Ry. 31; 2 Russ. 78; 5 Bing. 116. S. C. And see *Riddle* v. *White*, 4 Gwill. 1378. Another mode of providing for the tithes is by awarding a perpetual rent, in the nature of a common rent, to the parson. And in such a case, this rent will be payable whether the estate be cultivated or not, and the landlord will be liable for the payment of rent in the interval of the quitting of a tenant and the incoming of another, *Newling* v. *Pearce*, 1 B. & C. 437. 2 Dow. & Ry. 607.

And here it may be noticed, that it has been decided that the 6th sec. of the General Inclosure Act, which obliges claimants to allotments to make

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auction, and that purchaser bought the same;

premises) the said piece or parcel of land, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, to be put up for sale by public auction; *And* the said [*purchaser*] attended at the said sale, and became the pur-

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their claim before the commissioners, applies to tithes. *Doe* v. *Jefferson*, 2 Bing. 125.

Where an inclosure act directed commissioners to allot a portion of land to the rector and curate in lieu of all tithes, and the commissioners were required to distinguish the several allotments to such rector and curate respectively, it was held that the tithes were not extinguished until the commissioners had made their award. *Ellis* v. *Arnison*, 5 B. & A. 47. 1 B. & C. 70. 2 Dow. & R. 161. S. C.

Where an estate is discharged from tithes, a right of common appendant or appurtenant is also discharged; and on an approvement the land which a commoner takes in severalty follows the tenement in respect of which it is allotted, not the incorporeal hereditament, the manor from which it is severed; and therefore if the tenant be not discharged, neither will the land allotted be discharged. *Carysfort* v. *Wells*, 1 Mc Clell. & Yo. 600.

What a purchaser may insist upon, on a purchase of an allotment.

A purchaser of land under an inclosure act may insist on an official extract of the award, and a printed copy of the local act of parliament, and he should compare the description of the parcels in the abstract with the map usually deposited with the award, and thus identify the lands; but the preparation of a map or plan for the purpose of carrying an inclosure into effect, is no evidence of an allotment under an act which gives an appeal against an allotment written six months after a cause of complaint has arisen. *Rex* v. *Justices of Middlesex*, 1 Chit. Rep. 366.

Land tax.

Where lands are allotted under an inclosure act, in respect of rights of common appurtenant to other lands of which the land tax has been redeemed, the land tax does not attach upon the allotment. *Boehm* v. *Wood*, 1 Turn. & Russ. 332. And a similar rule obtains in respect of tithes. *Steele* v. *Mann*, *ubi supra*.

How expenses are usually defrayed.

The commissioners are usually authorized in local acts to defray the expenses of the inclosure, either by a rate on the several proprietors, or by enabling them to sell such allotments of land as they should see fit; and it is enacted by the General Inclosure Act, s. 32, that in case it shall be provided by any local act, that the expenses attending the same shall be paid by sale of any part of the land to be inclosed, the commissioners shall sell such part of the lands as will, in their opinion, be sufficient to raise the expenses required.

chaser thereof, at or for the price or sum of pounds: AND WHEREAS the said [*purchaser*] is desirous that the same hereditaments and premises should be conveyed to the uses hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of pounds of lawful money of Great Britain and

OF LAND ALLOTTED UNDER AN INCLOSURE ACT.

and that he is desirous to have premises conveyed. Testatum, in consideration of two-thirds to trus-

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If a particular tenant has paid the expenses of an inclosure, he may, as has been seen under the provisions of the 41 Geo. III. c. 109. sects. 29 & 30, charge the same on the estate, and this charge will take priority of all subsisting terms, see 1 Pow. Mortg. by Coven. 556 a. n.; and although he does not charge the estate with such expenses, his personal representative is entitled to a lien for his expenditure, against the remainder-man, *Drinkwater* v. *Combe*, 2 Sim. & Stu. 340.; but a tenant for life will not be permitted to fell timber in order to defray such expenses, *Lee* v. *Alston*, 1 Ves. jun. 78. 1 Bro. C. C. 194. S. C.

As to particular tenants paying the expenses.

Allotments are *primâ facie* rateable to the parish where they are situate. *Kempe* v. *Spence*, 2 W. Bl. 1244. And where there is a corn rent allotted in lieu of tithes, a rector is liable to be rated to the poor's rates, and to the repair of highways, *per* Bayley J. *Rex* v. *Boldero*, 6 Dow. & Ry. 557.; 4 B. & C. 467. S. C.; *Rex* v. *Lacy*, 5 B. C. 702; unless the inclosure act provide that the rent shall be payable "free from all taxes and deductions whatsoever, except the land-tax," *Chatfield* v. *Ruston*, 5 Dow. & Ry. 675; 3 B & C. 863; *Mitchell* v. *Fordham*, 6 B. & C. 274.

Allotments rateable.

By the 1 & 2 Geo. IV. c. 23, s. 1, landlords are empowered to distrain for rent of allotments leased before the completion of the award.

Landlords may distrain on them.

A period of six months is allowed for an appeal to be made against an allotment, and this is to be calculated from the time that the allotment was conclusively made, that is to say, on the completion of the award. *Rex* v. *Justices of Middlesex*, 1 Chitt. Rep. 366, 368.

Period of appeal from allotment.

There is sometimes a provision in local acts, that the lands allotted shall pass by a will made prior to the allotment, as a substitution for, or in addition to, the lands given by the will. But where there is no such provision, a question naturally arises whether a will made prior to the execution of the award will have this operation, if it be made in anticipation of the inclosure, and contain a devise of the allotments which should be made by the award. This has not yet been judicially decided; but it would seem that the allotment will not pass by such a devise, although, perhaps, good reasons might be given for a contrary opinion. See Coventry on Inclosures, 33—54, where the subject is fully considered.

Wills.

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tee, and of one-third of purchase

Ireland, by the said [*purchaser*] to the said [*trustee*], and of the sum of pounds of like lawful money, by the said [*purchaser*] to the said [*other vendor*] well and truly paid, at or before the sealing and delivery of these presents, (the receipt of which said sums of pounds

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As to what title may be required to encroachments on waste lands.

A subject of much interest, nearly related to the matters discussed in this note, may here be alluded to.

It frequently happens, that trifling encroachments on waste land are made by a commoner, and that on his selling his property many years afterwards, a question is raised as to the title to the encroachment. It is of importance, therefore, to ascertain what title a purchaser may require to a piece of land of this nature; and the more so, as it sometimes happens that the whole of the title to considerable premises may be thus invalidated, as a house or other building may be erected partly on the waste land, and partly on the other premises.

A case which has lately occurred in practice, and an opinion given after a review of the authorities, may, under these circumstances, be found useful to the reader. The part of the case on this question was as follows:

"The title to the freehold originally commenced with a deed of enfranchisement in 1801; but it has since been discovered that the house sold to B. does not, or that some part of it does not, stand upon the land enfranchised, but upon part of the waste of the parish; and for better conveying to the mind of Mr.——— a just conception of its situation in as concise a way as possible, the following circumstances may be mentioned.

"In 1799, T. A. took a lease of one Z. of a customary messuage, yard, garden, and sundry tenements adjoining thereto, situate near the pond, at the High Cross at T.

"In 1801, Mr. F., the lord of the manor, enfranchised and conveyed to Mr. W. the premises, describing them as the same held by T. A., under the lease from Z. T. A., it appears, after obtaining the lease, began to fill in the pond adjoining his property, with the tacit consent of the lord and the parishioners, and in 1801 had filled in, and was in possession of a great part of such pond, and shortly after that period had filled in, enclosed, and cultivated the whole of it.

"It is said that the house in question, or some part of it, is built on this waste so enclosed; and this may here be admitted for the purpose of raising the question.

"In 1809, the devisees in trust under Mr. W.'s will, conveyed the premises to the late T. T., and in this deed the dimensions are set forth, and are in accordance with what the property now admeasures, save two

and pounds, *they* said [*trustee*] and [*other vendor*] do hereby respectively admit, and of and from the same do hereby respectively acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators, and assigns;) HE the said [*trustee*], so far

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money to other vendor, Trustee, *celles*

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feet in depth, which was given up afterwards by Mr. T. to the public for widening the footpath. After Mr. T. purchased the land, he built upon it, and enjoyed peaceable possession during his life, as well as his trustees since his death.

"In 1822 (March 12), a survey was made by the lord of the manor and the parishioners, and this incroachment was, it would appear, taken into consideration, and an entry by the committee employed on the occasion was made in the parish books (and which was afterwards confirmed in vestry), in the following words:

"'No. 8' Is a piece of ground, formerly the pond near the High Cross, now built on by Mr. T. T., which your committee consider of great benefit to the said parish, inasmuch as a considerable rate is obtained by the said premises, and they therefore recommend this vestry to surrender any claims which they may have had upon the said grounds.'

"It appears on enquiry, that the waste is held by the parishioners and lord, in the following proportions; viz. the lord one-sixteenth, and parishioners the remaining fifteen-sixteenths.

"The question therefore is, whether an uninterrupted possession for the last (at least) twenty-five years, under all the circumstances, is not good as against the lord and parishioners, and whether a good marketable title cannot be made to the purchaser by the trustees."

The part of the opinion relating to this part of the case was as follows:

"If it can be proved that the incroachment was originally made with the privity and in view of the lord or his steward, and they took no steps to prevent it, a license will be presumed, even although there had been a possession of only twelve or thirteen years by the person, or his heirs or assigns. *Doe dem. Foley and others* v. *Wilson*, 11 East, 55. This privity, however, must be proved distinctly; and it is of importance that there should be the same lord and steward all the time of the enjoyment.

"As to the parishioners, twenty years adverse possession of a piece of waste inclosed, is a bar to their entry. *Hawke* v. *Bacon*, 2 Taunt. 155.

"This, I believe, is the law of the case; and the special circumstances

OF LAND ALLOTTED UNDER AN INCLOSURE ACT.

que trust, and other vendor and his trustee convey.

as relates to two equal undivided third parts or shares of and in the said piece or parcel of land, hereditaments, and premises hereinafter described, but not further or otherwise, and with the consent and privity of the said [*celles que trust*], (testified by their being parties to and sealing and delivering these presents,) *Doth* by these presents bargain, sell, alien, and release, *And* the said [*celles que trust*] so far as relates to the same two equal undivided parts or shares, but not further or otherwise, *Do*, and each of them *Doth* by these presents, grant, bargain, sell, alien, release, and confirm, *And* the said [*other vendor*] and [*trustee for vendor*](*a*), so far as relates to one equal undivided third part or share of and in the said piece or parcel of land, hereditaments, and premises hereinafter described, but not further or otherwise, *Do*, and each of them *Doth* by these presents, grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], (in his actual possession now being, &c.) and his heirs, ALL THAT piece or parcel of land, situate, lying, and being in the parish of , in the East Fen, in the county of and containing, by admeasurement, acres, roods, and perches, bounded on the east by , on the west by , on the north by , and on the south by , and lately in the occupation of ; and now of , which said piece or parcel of land and hereditaments, were by an award bearing date the day of , and made in pursuance of a certain act made and passed in the forty-first year of the reign of his late majesty king George the Third, intituled

Parcels. Description of a piece of land allotted under inclosure act.

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mentioned above, and particularly the confirmation of the recommendation of the committee by the vestry, make it even more clear. It appears to me, therefore, that the court will compel the purchaser to accept the title. I understand there is no claim made by T. A. or his representatives to the incroachment."

As a bill has been filed according to this opinion, and as the refusal of the title has been rested on this ground, the question will probably be soon decided.

Release of interest alone.

(*a*) As conciseness was particularly desired in this transaction, it was thought safe for the purchaser to rely solely on the release of the vendor's interest, and to dispense with the necessity of an exercise of the power as to the one-third. See *ante*, p. 281. n.

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" An Act for Dividing and Allotting certain Fens, called the East and West Fens, in the county of [illegible]," and a certain other act made and passed in the fiftieth year of the same reign, intituled " An Act for Amending the said last mentioned Act, and for Dividing and Enclosing the Parochial Allotments, Lands, and Grounds, belonging to certain Parishes having certain Right of Common on the said Fens, and for declaring to what Parishes such Allotments should belong," allotted and awarded by the commissioners appointed by the said acts, to the said [M. H.], [S. H.], and [M. A. H.], in lieu of the right of common appertaining to certain hereditaments and premises situate on the said Fens, belonging to them, or to some or one of them, and being No. [illegible], on the plan of general allotment made in pursuance thereof, *And* all rights and advantages incident thereto, or thereto in anywise appertaining; *Together* with all privileges, commodities, advantages, emoluments, and appurtenances whatsoever, to the same piece or parcel of land, hereditaments, and premises belonging, or in any way appertaining, *And* the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof; *And all* the estate, right, title, interest, use, trust, property, claim, and demand whatsoever, both at law and in equity, of them the said [*trustee*], [*celles que trust*], [*other vendor*], and [*trustee for vendor*], and every of them, in, to, or out of the same hereditaments and premises. TO HAVE AND TO HOLD the said piece or parcel of land, hereditaments, and premises hereby granted and released, with their appurtenances, unto the said [*purchaser*], and his heirs, to such uses, and for such purposes, as the said [*purchaser*] by deed or writing, with or without power of revocation, shall from time to time direct or appoint, and for want of such direction or appointment, and subject thereto, *To the use* of the said [*purchaser*] and his assigns, for his life, and after the determination of that estate, *To the use* of the said [*trustee for purchaser*] and his heirs, during the life of the said [*purchaser*], *In trust* for the said [*purchaser*] and his assigns; and after the determination of the estate so limited to the said [*trustee for purchaser*] and his heirs, *To the use* of the said [*pur-*

General words.

The reversion,

and all the estate.

Habendum, to purchaser to uses, to bar dower.

OF LAND ALLOTTED UNDER AN INCLOSURE ACT.

chaser], his heirs and assigns for ever; *And* the said [*trustee*], so far as relates to two equal undivided third parts or shares of and in the said piece or parcel of land, hereditaments, and premises hereby granted and released, or intended so to be, and to his own acts and deeds, but not further or otherwise; *And* the said [*trustee for vendor*] so far as relates to one equal undivided third part or share of and in the same hereditaments and premises, and to his own acts and deeds, but not further or otherwise, *Do*, and each of them *Doth*, hereby COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, that they the said [*trustee*] and [*trustee for vendor*], have not nor hath not at any time heretofore, made, done, committed, executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof, the said piece or parcel of land, hereditaments, and premises hereby granted and released, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be, in anywise impeached, charged, affected, or incumbered; *And* the said [*celles que trust*], so far as relates to two equal undivided third parts or shares of and in the said piece or parcel of land, hereditaments, and premises hereby granted and released, or intended so to be, and to their own acts and deeds respectively, but not further or otherwise; *And* the said [*other vendor*], so far as relates to one equal undivided third part or share of and in the same hereditaments and premises, but not further or otherwise, *Do*, and each of them *Doth*, hereby COVENANT and agree with and to the said [*purchaser*], his heirs and assigns, *That they* now have in themselves good right, full power, and lawful and absolute authority, to grant, bargain, sell, release, and convey the said piece and parcel of land, hereditaments, and premises hereby granted and released, or intended so to be, with their appurtenances, to the uses and in the manner aforesaid; *And that* it shall and may be lawful for the said [*purchaser*], his heirs, appointees, and assigns, at all times hereafter, peaceably and quietly to enter into, hold, occupy, possess, and enjoy the said piece or parcel of land, hereditaments, and premises hereby granted and released,

Qualified covenant by trustee for sale, and by trustee for vendor against incumbrances.

Qualified covenant by the celles que trust, and other vendor, for title;

that they have good right to convey;

for quiet enjoyment;

or intended so to be, with their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any let, claim, demand, interruption, or eviction, from them the said [*celles que trust*] and [*other vendor*], or their heirs, or by any other person or persons whomsoever, lawfully or equitably claiming or to claim, by, from, or under, or in trust for them, or any of them; *And that* freely and clearly, acquitted, exonerated, released, and for ever discharged, and well and sufficiently saved, defended, kept harmless, and indemnified, by the said [*celles que trust*] and [*other vendor*], their heirs, executors, and administrators, of, from, and against all gifts, grants, bargains, sales, powers, jointures, dowers, and all rights and titles of dower, uses, trusts, and all other estates, charges, debts, and incumbrances whatsoever, either already made, executed, occasioned, and suffered, or hereafter to be made, executed, occasioned, or suffered, by the said [*celles que trust*] and [*other vendor*], or their heirs, or by any person or persons lawfully or equitably claiming or to claim, by, from, or under them, or any of them; *And moreover*, that the said [*celles que trust*] and [*other vendor*], and their heirs, shall and will, at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs, charges, and expenses of the said [*purchaser*], his heirs, appointees, or assigns, make, do, acknowledge, levy, suffer, and execute, or cause to be made, done, acknowledged, levied, suffered, and executed, all such further, lawful, and reasonable acts, deeds, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely granting, conveying, and assuring the said piece or parcel of land, hereditaments, and premises hereby granted and released, or intended so to be, with their appurtenances, unto and to the uses aforesaid, as by the said [*purchaser*], his heirs, appointees, or assigns, or his or their counsel in the law, shall be advised, devised, and required, so as no such further assurance or assurances contain or imply any further or other covenant or warranty, than against the acts and deeds of the person or persons who shall be

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free from incumbrances,

and for further assurance.

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required to make or execute the same, and the acts and deeds of his or their heirs, executors, or administrators. IN WITNESS, &c.

NEW RIVER SHARE.

RELEASE *of a* NEW RIVER SHARE (*a*), *with Variation for its being subject to* DOWER, *and Covenant to Levy* THREE FINES *for barring it.*

THIS INDENTURE, made the day of ,

Parties.

BETWEEN [*vendor*] of, &c. of the first part; [*purchaser*] of, &c. of the second part; and [*trustee to bar dower*] of, &c. of the other part.

Recital of seisin in fee.

WHEREAS the said [*vendor*] is seised of or well entitled in fee simple in possession unto the part or share, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances:

Contract for purchase.

AND WHEREAS the said [*purchaser*] hath contracted and agreed with and to the said [*vendor*], for the absolute purchase of the same part or share, hereditaments, and premises, and the inheritance thereof in fee simple, free from incumbrances, at or for the price or sum of pounds:

Desire of purchaser to have premises conveyed.

AND WHEREAS the said [*purchaser*] is desirous that the same hereditaments and premises should be conveyed to the uses and in the manner hereinafter mentioned.

Testatum, whereby vendor conveys to purchaser,

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration (*consideration and receipt, as ante, p.* 256), HE the said [*vendor*], *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*purchaser*], in his actual, &c. (*reference to lease*

River share, real estate.

(*a*) A new river share is real estate. *Buckridge* v. *Ingram*, 2 Ves. jun. 652. And note on ASSIGNMENTS, *post.*

for a year), and his heirs, ALL THAT part or share of him the said [*vendor*], of and in the moiety called the King's Moiety, of the New River water-work, cut, or stream, brought from Amwell, in the county of Herts, and Middlesex, to the city of London; *And* of and in ALL THAT messuage or tenement, with the ponds, yard, and gardens thereunto belonging, situate in the parish of Islington, in the county of Middlesex; *And* of and in all other messuages, tenements, buildings, ponds, streams, and water-courses, used or enjoyed, or belonging to the said water-course; *And* of and in the ground and soil of the said river, ponds, streams, and water-course, and of and in all pipes, conduits, cisterns, engines, and other implements to the same belonging, and of and in all manner of profits, advantages, and commodities thereof, or by reason or means thereof, to be paid, raised, or gotten, and of and in all such other sums of money, rents, reversions, benefits, profits, and commodities whatsoever, that now are, or at any time or times hereafter mentioned, shall or may be raised, had, made, levied, or gotten unto any person or persons whomsoever; *And* the reversion, &c.; *And* all the estate, &c. TO HAVE AND TO HOLD the said part or share, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with the appurtenances, unto the said [*purchaser*] and his heirs, to such uses, &c. (*b*) (*uses to bar dower, as ante, p.* 276.) (*Covenants for title, as ante, p.* 257, *varying the reference to the parcels to* "part or share, hereditaments, and premises.") IN WITNESS, &c.

. NEW RIVER SHARE.

Parcels.

Habendum to purchaser in fee, to uses, &c.

(*b*) A new river share being liable to dower, if the vendor's wife has any right of this nature, it must be barred; and as the water of the New River runs through the two counties of Hertford and Middlesex, and the city of London, there must be three fines, one in each bailiwick. The particular descriptions in the three bailiwicks may be seen in the office books. See Hands on Fines, 250. 4th edit. and see Vol. IV. tit. FINES. The covenant to levy the three fines will be as follows:

New River share subject to dower.

"AND for barring and extinguishing all right and title of dower which the said , the wife of the said

Covenant to levy three fines.

NEW RIVER SHARE.

[*vendor*], hath, or can or may have, in or out of the said part or share, hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, with their appurtenances, HE the said [*vendor*], with the consent and approbation of the said his wife, (testified by her being a party to and sealing and delivering these presents,) *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*releasee to uses*], his heirs and assigns, that he the said [*vendor*] and his wife, shall and will, at the costs and charges of the said [*vendor*], his heirs, executors, or administrators, as of Term last, or in or as of Term next, or some other subsequent Term, when thereunto requested by the said [*purchaser*], his heirs or assigns, acknowledge and levy in due form of law, before his Majesty's justices of the Court of Common Pleas, at Westminster, unto the said [*purchaser*] and his heirs, three or more fines *sur conuzance de droit come ceo*, &c.; whereupon proclamations shall be had and made according to the form of the statute in that case made and provided, and the usual course of fines with proclamations, for the assurance of lands and hereditaments in like cases used and accustomed of the said part or share, hereditaments, and premises hereby granted and released, or intended so to be, and their appurtenances, by such names and descriptions as shall be sufficient to comprise and ascertain the same: AND IT IS HEREBY AGREED AND DECLARED between and by the said parties to these presents, *That* the said fine or fines so to be acknowledged and levied as aforesaid, *And* all and every other fine and fines, conveyances, and assurances of the same part or share, hereditaments, and premises, or any part thereof, shall operate and enure, and shall be adjudged, deemed, construed, and taken to operate and enure, *To the uses* herein before expressed and declared of and concerning the same."

Declaration that the fine shall enure to the purchaser, to uses to bar dower.

BY TENANTS IN COMMON TO NAVY COMMISSIONERS.

CONVEYANCE *by* TENANTS IN COMMON (*One being a Married Woman*), *of a Piece of Land to the* COMMISSIONERS *of His Majesty's* NAVY, *for the Purpose of Erecting a* SIGNAL STATION *thereon, with a Right of Way over other Lands:* RELEASE *by Annuitant of Annuity charged on the Premises, together with other Lands: Special Provision as to* REPURCHASE.

THIS INDENTURE, made the day of Parties.
BETWEEN [*tenant in common*], of the first part; [*husband*] and [*other tenant in common*], his wife (late F.S.), spinster, of the second part; [*annuitant*], of the third part; [Sir T. B. M.] Knight, Commander of the Most Honourable Military Order of the Bath, and Vice Admiral of the Red Squadron of his Majesty's Fleet, [J. T.] and [Sir R. S.], Knight (three of the principal officers and commissioners of his Majesty's Navy), of the fourth part; and [*trustee*] of the fifth part. WHEREAS [C. S.] did, in such manner as the law requires for rendering valid devises of freehold estates, duly sign and publish his last will and testament in writing, bearing date the day of , and thereby (amongst other things) gave and bequeathed unto the said [*annuitant*], and her assigns, an annuity or yearly sum of pounds during her life, and charged all his estate and effects with the payment thereof; *And* (subject thereto) the said testator gave and devised the lands and hereditaments hereinafter mentioned, and intended to be hereby granted and released, with the appurtenances, and all other his freehold estates, as well in possession as in reversion, unto his brothers [J. W. S.], [E. S.], and [J. S.], and their heirs, *In trust*, to pay the rents thereof unto his the said testator's three sisters [S. S.], [T. S.], and [A. M. S.], during their joint lives, and after the decease of any one of them, to pay the rents thereof unto his two surviving sisters; *And* after the de-

Recital of will, whereby testator gives an annuity, and charges the same on his real estate;

and subject thereto devises all his real estate, In trust to pay the rents to his sisters for their joint lives; and after the decease of two of his sisters, to the vendors, as tenants in common.

BY TENANTS IN COMMON TO NAVY COMMISSIONERS.

cease of any two of his said sisters, the said testator devised all his said real estates unto his two daughters, the said [*tenant in common*] and [*other tenant in common*], the wife of the said [*husband*] (then [F. S.],) their heirs and assigns; *And* the said testator appointed the said [J. W. S.], [E. S.], and [J. S.], executors of his said will.

Death of testator, and probate of his will.

AND WHEREAS, the said [C. S.] departed this life in or about the month of , without having revoked or altered his said will, and on or about the day of , the same will was duly proved by the said [E. S.] and [J. S.], in the Prerogative Court of the Archbishop of Canterbury;

That two of his sisters have died.

AND WHEREAS the said [S. S.] and [T. S.] have sometime since departed this life, (the said [S. S.] having died in or about the month of last,)

Contract for purchase of piece of land, in trust for the king, with a right of way over other lands;

AND WHEREAS the said [Sir T. B. M.], [J. T.], and [Sir R. S.], as such principal officers and commissioners of his Majesty's Navy as aforesaid, have contracted and agreed with the said [*tenant in common*], [*husband*], and [*other tenant in common*] his wife, for the purchase from them, in trust for his Majesty, of the said piece or parcel of land or ground hereinafter firstly described, with the appurtenances, with a right of road or way through, over, and upon the said piece or parcel of land or ground hereinafter secondly described, and the inheritance in fee simple in possession of the same respectively, free from incumbrances, at or for the price or sum of pounds; but subject to such right of pre-emption as is hereinafter given and secured;

subject to right of preemption.

Agreement by annuitant to release annuity, being satisfied that the other lands are sufficient security.

AND WHEREAS the said [*annuitant*] *Hath*, at the request of the said [*tenant in common*], [*husband*], and [*other tenant in common*] his wife, agreed to release the said pieces or parcels of land or ground hereinafter firstly and secondly described, and their appurtenances, from the said annuity or yearly sum of pounds, so given and bequeathed to her by the said recited will of the said [C. S.] as aforesaid, being satisfied that the residue of the estates and effects charged with the payment thereof are an ample security for the same;

That fine shall be covenanted to be levied by first and second parties.

AND WHEREAS, for the purpose of carrying the said hereinbefore firstly and secondly recited agreements into effect, the said parties hereto, of the first and second parts, have agreed to join in levying a fine of the said pieces or parcels of land or ground hereinafter firstly and secondly described, and the

BY TENANTS IN COMMON TO NAVY COMMISSIONERS.

appurtenances, unto the said [*trustee*], and his heirs, to the uses, and upon and for the trusts, intents, and purposes hereinafter limited, expressed, and declared of and concerning the same, and to enter into the covenants and agreements hereinafter on their respective parts contained. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreements, and for carrying the same into effect, *And* in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [Sir T. B. M.], [J. T.], and [Sir R. S.], to the said [*tenant in common*], [*husband*], and [*other tenant in common*] his wife, or some or one of them, in hand well and truly paid, at or immediately before the sealing and delivery of these presents, with and out of certain monies in their hands, or at their disposal, as such officers and commissioners of his Majesty's Navy as aforesaid, (the receipt of which said sum of pounds, the said [*tenant in common*], and [*husband*], and [*other tenant in common*] his wife, do hereby respectively admit and acknowledge, and of and from the same, and every part thereof, do hereby acquit, release, and for ever discharge the said [Sir T. B. M.], [J. T.], and [Sir R. S.], their heirs, executors, administrators, and assigns, and every of them, and also his Majesty, his heirs and successors); *And* also, in consideration of the sum of five shillings of like lawful money, by the said [*trustee*] to each of them the said [*tenant in common*], [*husband*], and [*other tenant in common*] his wife, and [*annuitant*] at the same time paid (the receipt whereof is hereby acknowledged), HE, the said [*husband*], so far as relates to the acts and deeds of himself and the said [*tenant in common*] his wife, but not further or otherwise, *Doth* hereby for himself, his heirs, executors, and administrators, and each of them the said [*other tenant in common*], and [*annuitant*], so far as relates to her own acts and deeds only, but not further or otherwise, *Doth* hereby, for herself, her heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustee*] and his heirs, that they the said [*husband*], and [*tenant in common*] his wife, and [*annuitant*], shall and will (*levy a fine, as ante*, p. 296), of ALL that piece or parcel of land or ground, containing one acre

Testatum, whereby in consideration of purchase-money, paid out of public monies,

and of nominal consideration by trustee,

husband, as to the acts of himself and his wife, and tenant in common, and annuitant, covenant with trustee to levy a fine.

Parcels.

BY TENANTS IN COMMON TO NAVY COMMISSIONERS.

(or thereabouts), situate and being at , in the parish of , in the county of , at the south angle of a field there called Upper Down Field, and bounded on or towards the North-east or North-west sides thereof by other parts of the said field, called Upper Down Field, on or towards the South-east side thereof by a lane or road leading from a field or place called Middle Brake Hill, through the said field called Upper Down Field, and a certain other field called Lower Down Field, to a field called Hill Field, and on or towards the South-west side thereof by the said field called Lower Down Field, (which said piece or parcel of land or ground hereinbefore described, is more particularly delineated and described in the map or plan drawn in the margin of these presents, and is therein distinguished by the letter A); *And* also of ALL THAT piece or parcel of land or ground, containing, &c. *And it is hereby declared and agreed*, by and between all the said parties to these presents, that the said fine or fines so to be acknowledged and levied as aforesaid, and all and every other fines or fine, conveyances and assurances in the law whatsoever, already had, made, acknowleded, levied, or executed, of the said pieces or parcels of land or ground hereinbefore firstly and secondly described, and their appurtenances, or any or either of them, or any part or parcel thereof, either alone or together with any other lands or hereditaments, by or between the said parties to these presents, or any of them, or whereunto they or any of them, were, was, are, is, or shall be parties or privies, or a party or privy, shall as to the said pieces or parcels of land or ground hereinbefore firstly and secondly described, and their appurtenances, *Be* and enure, and be adjudged, deemed, construed, and taken to be and enure *To the uses*, and upon and for the trusts, intents, and purposes hereinafter expressed and declared, or referred to, of and concerning the same, (that is to say); *As* to, for, and concerning the said piece or parcel of land or ground hereinbefore firstly described, and the appurtenances, *To the use* of the said [Sir T. B. M.], [J. T.], and [Sir R. S.], their heirs and assigns for ever; *But* nevertheless upon and for the trusts, intents, and purposes hereinafter declared concerning the same; *And* as to, for,

Reference to map.

Declaration that fine shall enure.

As to the lands firstly described, to the use of navy commissioners in fee, upon the trusts hereinafter declared;

and concerning the said piece or parcel of land or ground hereinbefore secondly described, and the appurtenances, *To the use* and intent that the said [Sir T. B. M.], [J. T.], and [R. S.], their heirs and assigns, owners for the time being of the said piece or parcel of land or ground hereinbefore firstly described, shall and may, from time to time, and at all times hereafter, have full and free liberty, power, and authority, for themselves, and their tenants and servants, and all other persons having occasion to go to and from the said piece or parcel of land or ground hereinbefore firstly described, or any part thereof, to go, pass, travel on foot, or with horses, waggons, carts, and other carriages, or without, in, through, over, and upon the said piece or parcel of land or ground hereinbefore secondly described, or any part thereof, *And* subject and without prejudice to such right of road or way as aforesaid, *To* the same uses, upon the same trusts, and subject to the same charges, to, upon, and subject to which the same piece or parcel of land or ground, and the appurtenances, now stand limited and settled, under and by virtue of the said recited will of the said [C. S.]: *And* it is hereby agreed and declared, that the said piece or parcel of land or ground hereinbefore firstly described, and the appurtenances, and the said right of road or way hereinbefore limited, given, or created as aforesaid, are hereby limited and assured to the said [Sir T. B. M.], [J. T.], and [Sir R. S.], their heirs and assigns, as hereinbefore is mentioned, *In trust* for his Majesty, his heirs and successors, for the naval department of the public service; *And* the said [*husband*] so far as relates to the acts and deeds of himself and the said [*tenant in common*] his wife only, but not further or otherwise, *Doth* hereby for himself, his heirs, executors, and administrators, and each of them the said [*other tenant in common*] and [*annuitant*], so far as relates to her own acts and deeds only, but not further or otherwise, *Doth* hereby for herself, her heirs, executors, and administrators, COVENANT and declare with and to the said [*trustee*], his heirs and assigns, that (*they have not incumbered, see ante, p.* 344;) *And* in pursuance and further performance of the said agreement, and in consideration of the premises, he the

BY TENANTS IN COMMON TO NAVY COMMISSIONERS.

and as to the land secondly described, to the intent that the navy commissioners may have a right of way over the same;

and, subject to such right of way, to the uses declared by the will.

Declaration that lands firstly described, and the right of way, are limited to navy commissioners.

In trust for the King, for the public service.

Covenants by husband, tenant in common, and annuitant, that they have not incumbered the premises.

Covenant by husband as to

BY TENANTS IN COMMON TO NAVY COMMISSIONERS.

said [*husband*], so far as relates to the acts and deeds of himself, and the acts and deeds of the said [*tenant in common*] his wife, but not further or otherwise, *Doth* hereby for himself, his heirs, executors, and administrators, and the said [*other tenant in common*], so far as relates to her own acts and deeds only, but not further or otherwise, *Doth* hereby for herself, her heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustee*], his heirs and assigns, and with and to the said [Sir T. B. M.], [J. T.], and [Sir R. S.], their heirs and assigns, that (*they will produce deeds, as ante, p.* 92.)

acts of himself and wife; and other tenant in common, as to her acts, to produce deeds.

Second witnessing part. Covenant by navy commissioners, on behalf of the King, with vendors, that if lands firstly described shall cease to be required for the public service, an offer shall be made to vendors or occupiers of land secondly described to purchase the same at ——*l.*;

AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and further performance of the said agreements, and for further carrying the same into effect, and for the considerations hereinbefore expressed, the said [Sir T. B. M.], [J. T.], and [Sir R. S.], *Do* hereby for and on behalf of his Majesty, his heirs and successors, COVENANT and agree with and to the said [*tenant in common*], [*husband*], and [*other tenant in common*] his wife, their heirs and assigns, owners for the time being of the said piece or parcel of land or ground hereinbefore secondly described, and their appurtenances, subject to such right of road or way over the same as aforesaid, *That* if the said piece or parcel of land or ground hereinbefore firstly described, shall cease to be required for the public service, and shall be directed to be sold and converted into money; an offer or option of purchasing the same piece or parcel of land or ground, and the appurtenances, and the right of road or way hereinbefore limited, given, or created as aforesaid, at or for the price or sum of pounds, shall be made and given to the said [*tenant in common*], [*husband*], and [*other tenant in common*] his wife, their heirs or assigns, owners or owner for the time being of the said piece or parcel of land or ground hereinbefore secondly described, and the appurtenances, subject as aforesaid, before any other means shall be resorted to for disposing of the same. PROVIDED NEVERTHELESS that the materials of all such buildings as shall be standing upon the premises, shall be at the absolute disposal of the government. IN WITNESS, &c.

but materials of buildings to be at the disposal of government.

GRANT *of a* RIGHT OF WAY *for Horses and Carriages, &c. with Variations for its being a* FOOTWAY. — OF A RIGHT OF WAY.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. WHEREAS the said [*vendor*] is seised of or well entitled to certain messuages or tenements, lands, hereditaments, and premises, situate in the parish of , in the county of ; AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the purchase of a right of way over and across certain closes of land hereinafter more particularly described, being part of the said hereditaments and premises of which the said [*vendor*] is so seised or entitled, as hereinbefore is mentioned. NOW THIS INDENTURE WITNESSETH, that in consideration of, &c. (*consideration and receipt, as ante*, p. 256), HE the said [*vendor*], *Doth* hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, grant, and agree with and to the said [*purchaser*], his heirs and assigns, that it shall be lawful for the said [*purchaser*], his heirs and assigns, and the tenants and occupiers for the time being of the messuage or tenement of the said [*purchaser*], called , or any part thereof, and his and their servants, and all and every other person or persons thereunto authorized by him and them, from time to time, and at all times for ever hereafter, at his and their will and pleasure, by night and by day, and for all purposes, to go, return, pass and repass [with (*a*) horses, cattle, and other beasts, carts, waggons, and other carriages, laden or unladen,] to and from the said messuage or tenement, through

Parties.

Seisin of vendor.

Contract for purchase.

Testatum, whereby vendor covenants that purchaser may have a right of way,

(*a*) The omission of the words in brackets will make this precedent answer for a grant of a footway. Footway.

OF A RIGHT OF WAY.

and across the several closes of land, or fields, called , which now belong to him the said [*vendor*], in fee simple, unto and towards a certain road or lane communicating with the highway or public road to ; *And* that it shall be lawful for the said [*purchaser*], his heirs and assigns, to make and lay causeways, or otherwise to repair and amend the same, as there shall be occasion; *And* the said [*purchaser*], *Doth* hereby for himself, his heirs and assigns, COVENANT, promise, and agree with the said [*vendor*], his heirs and assigns, that he the said [*purchaser*], his heirs and assigns, shall and will from time to time, and at all times hereafter, at his or their own costs and expense, repair and amend, and keep repaired and amended, in a proper, substantial, and workmanlike manner, the said road or way, the right of passing in and over which is hereby granted, and will from time to time, and at all times hereafter, at the like costs and expenses, repair and renew the quickset hedge and fence lately planted by the said [*vendor*], on both sides of the said road or way (*b*). IN WITNESS, &c.

with liberty to lay causeways, in order to repair the way.

Covenant by grantee that he will repair.

Other conveyance.

(*b*) See another conveyance of a right of way, *ante*, p. 523.

RELEASE *of an* ADVOWSON. (*a*)

OF ADVOWSON.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. WHEREAS the said [*vendor*] hath contracted with the said [*purchaser*], for the absolute sale to him of the advowson of the rectory of , in the county of , and the inheritance thereof in fee simple, free from incumbrances, at or for the price or sum of pounds. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] paid, at or before the sealing or delivery of these presents, (the receipt of which said sum of pounds he the said [*vendor*] doth hereby acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators, and assigns); HE, the said [*vendor*], *Hath* granted, bargained, sold, released, and confirmed, And by these presents *Doth* grant, bargain, sell, release, and confirm, unto the said [*purchaser*], in his actual, &c. (*reference to lease for a year*), and his heirs, ALL THAT, the advowson, donation, right of patronage, and presentation of, in, and to the rectory and parish church of , in the county of , with all and singular the rights, members, and appurtenances thereto belonging, or in anywise appertaining, *And* the reversion and reversions, re-

Parties.

Contract for purchase.

Testatum.

Consideration.

Vendor conveys

Parcels.

(*a*) As an advowson is subject to dower, it may be proper to convey it to the purchaser, so as to prevent dower. If this is desired, a trustee will be of the third part, and the advowson, instead of being conveyed to the purchaser in fee, will be limited to the usual uses to bar dower, as *ante*, p. 23, n.

Dower.

OF ADVOWSON.

mainder and remainders thereof, and all the estate, right, title, interest, trust, property, claim, and demand whatsoever, at law or in equity, of the said [*vendor*], in, to, or out of the same advowson, and every part thereof, To HAVE AND TO HOLD the said advowson and premises hereby granted and released, or intended so to be, with the appurtenances, unto the said [*purchaser*] and his heirs, *To the use* of the said [*purchaser*], his heirs and assigns for ever; *And* the said [*vendor*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, in manner following (that is to say); *That* (for and notwithstanding any act, deed, matter or thing, by him the said [*vendor*] at any time hereafter made, done, executed, permitted, or willingly or knowingly suffered to the contrary) he the said [*vendor*] is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of the said advowson and premises hereby granted and released, or intended so to be, with the appurtenances, of a good, sure, perfect, absolute, and indefeasable estate of inheritance in fee simple, without any manner of condition, proviso, trust, power of revocation, or limitation of any use or uses, or any other restraint, cause, matter, or thing whatsoever, to alter, change, charge, revoke, make void, or determine the same estate; *And* that (for and notwithstanding any such act, matter, or thing as aforesaid,) *he* the said [*vendor*] hath in himself at the time of the sealing and delivery of these presents, good right, full power, and lawful and absolute authority to grant, bargain, sell, and release the said advowson and premises unto the said [*purchaser*], his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And also*, that it shall and may be lawful to and for the said [*purchaser*], his heirs and assigns, from time to time, and at all times hereafter, whenever the said church of shall or may, by the death, resignation, deprivation, cessation, or change of the rector or incumbent thereof for the time being, or otherwise, happen to become vacant, to present some proper and qualified clerk to succeed to the said church, as the rector or parson thereof, and to do all

Habendum to purchaser, his heirs and assigns.

Covenants for title;

Seised in fee.

Good right to convey;

and that it shall be lawful for the purchaser to present;

other acts which appertain to the office of patron of the said rectory or church, without let, suit, molestation, hindrance, interruption, or disturbance, of, from, or by the said [*vendor*] or his heirs, or any person or persons claiming, or to claim, by, from, through, or under him, them, or any of them; *And* that free and clear, and freely, clearly, and absolutely acquitted, exonerated and discharged, or otherwise, by the said [*vendor*], his heirs, executors, administrators, or assigns, or some or one of them, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and singular former and other gifts, grants, bargains, sales, mortgages, charges, and incumbrances whatsoever, had, made, done, executed, committed, or suffered, by the said [*vendor*], or any person or persons claiming, or to claim, by, from, through, or under him; *And moreover*, that *he* the said [*vendor*] and his heirs, and every other person having, or lawfully or equitably claiming, or who shall or may have, or lawfully or equitably claim any estate, right, title, or interest in, to, or out of the said advowson and premises hereby granted and released, or intended so to be, by, from, or under him or them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the proper costs and charges of the said [*purchaser*], his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, matters and things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely conveying and assuring the same advowson and premises, with the appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, or otherwise, as he or they shall direct and appoint, as by the said [*purchaser*], his heirs or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required; so that such further assurance or assurances contain or imply no further or other warranty or covenant, than against the person or persons who shall be required to make and execute the same, his, her, or their heirs, executors, and administrators' acts and deeds only; and

OF ADVOWSON.

free from incumbrances:

and for further assurance.

OF ADVOWSON.

so that the person or persons, who shall be required to make and execute such further assurance or assurances, be not compelled, nor compellable, for the making or doing thereof, to go, or travel, from his, her, or their dwelling or respective dwellings, or usual place or places of residence or abode. (*a*) IN WITNESS, &c.

NEXT PRESENTATION.

GRANT *of a* NEXT PRESENTATION.

Parties.

THIS INDENTURE, made the day of , and in the year of our Lord , BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part.

Seisin of vendor, and possession of incumbent.

WHEREAS the said [*vendor*] is seised of or well entitled to the advowson of the rectory and parish church of , in the county of ; AND WHEREAS [A. B.] is now the present incumbent thereof;

Contract for purchase.

AND WHEREAS the said [*purchaser*] hath contracted with the said [*vendor*] for the absolute purchase of the next turn or right of presentation to the said church, upon the decease, resignation, or deprivation of the said [A. B.], or other avoidance of the said parish church, at the price or sum of pounds.

Testatum.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement,

consideration and receipt.

and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendor*] in hand well and truly paid, at or before the sealing and delivery of these presents, (the receipt whereof, the said [*vendor*]

Right to present to a chapel of ease.

(*a*) The right of presentation to a chapel of ease belongs to the incumbent of the parish, unless there be a special agreement to the contrary, to which the parson, the patron, and the ordinary, must be parties. *Farnworth* v. *Bishop of Chester*, 4 B. & C. 555. 7 Dow. & Ry. 56. And see *Faulkner* v. *Elger*, 6 Dow. & Ry. 517. 4 B. & C. 449.

doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his executors, administrators, and assigns;) HE the said [*vendor*], *Hath* granted, bargained, and sold, *And* by these presents *Doth* grant, bargain, and sell unto the said [*purchaser*], his executors, administrators, and assigns (*a*), ALL THAT next right or turn, avoidance, or right of nomination and presentation of and to the said rectory and parish church of , in the county of , whenever the same shall first after the date of these presents become void, by the death, resignation, or deprivation of the said [A. B.], *Together* with all the rights, privileges, commodities, and emoluments to the same belonging, or in anywise appertaining, *And* all the right, title, and interest of him the said [*vendor*], of, in, and to the same turn or presentation, and premises. TO HAVE AND TO HOLD the said next turn or presentation and premises hereby assigned, or intended so to be, with the appurtenances, unto the said [*purchaser*], his executors (*a*), administrators, and assigns; *And* the said [*vendor*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, declare, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, in manner following (that is to say); *That* for and notwithstanding, &c. (*see* p. 532) he the said [*vendor*], at the time of the sealing and delivery of these presents, hath in himself good right, full power, and lawful and absolute authority, to grant, bargain, and sell, the said next turn or presentation, and premises, hereby granted, bargained, and sold, or intended so to be, with the appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, in manner and form aforesaid;

NEXT PRESENTATION.

Vendor conveys

Parcels.

Habendum to the purchaser, his executors, administrators, and assigns.

Covenants for title;

Good right to assign;

(*a*) A next presentation is personal estate, and should be therefore limited to the personal representatives of the purchaser. See *Rennell* v. *Bishop of Lincoln*, 3 Bing. 228. 7 B. & C. 113, where the subject is fully discussed; and 1 Byth. by Stewart, 185; and note, that by a case reported since its publication the decision of the Common Pleas there mentioned has been reversed by the King's Bench.

Next presentation.

NEXT PRESENTATION.

and that purchaser may present;

And that for and notwithstanding any such act, deed, matter, or thing, made, omitted, committed, or knowingly suffered or executed to the contrary, it shall and may be lawful for the said [*purchaser*], his executors, administrators, and assigns, to present any fit and able person to the said advowson, rectory, and parish church of aforesaid, whenever it shall become vacant by or through any of the ways or means aforesaid, or otherwise howsoever; *And* that free, &c. (as *ante*, p. 533;)

for the further assurance.

And moreover, that he the said [*vendor*], his executors, administrators, and assigns, and all and every person or persons whomsoever, having or claiming any estate, right, title, or interest, in, to, or out of the said advowson, rectory, or parish church of aforesaid, shall and will from time to time, and at all times hereafter, at the costs and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, perform, and execute all such further and other reasonable acts, deeds, grants, conveyances, assurances, matters and things whatsoever, for the further, better, and more perfectly granting, bargaining, selling, and assuring the said next turn, presentation, and premises hereby granted, or intended so to be, unto the said [*purchaser*], his executors, administrators, or assigns, as by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, advised, or required, so that the person or persons who shall be required to make the same, be not compelled or compellable to go or travel from his, her, or their place or places of abode (*b*). IN WITNESS, &c.

Right of crown to present.

(*b*) In some of the printed forms, a proviso is here introduced for providing that the right of the crown to present, on the incumbent's being promoted to a bishoprick, shall not defeat this grant; but as the purchaser will have the right of presenting next after such crown presentation, without any clause expressly providing for it, such a provision is useless, and need never be inserted. See 1 Byth. 180.

Suggestion as to the saving *ad valorem* duty.

It was decided in the late case of *Wilmot* v. *Wilkinson*, 6 B. & C. 506, that an agreement for a valuable consideration to present such person on the next avoidance as A. B. shall appoint, was not an assign-

OF TITHES.

RELEASE *of the* TITHES (*a*) *of a Rectory, by* JOINT-TENANTS; *the History of the Title being shortly noticed in the Parcels; with Variations.*

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the first part; [*purchaser*] of, &c. of the second part; and [*trustee*] of, &c. of the third part. WHEREAS [A. B.] late of, &c. deceased, was

Parties.

Recital that A. B. being

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ment of a next presentation, and not liable therefore to *ad valorem* duty. It may deserve consideration therefore, whether an actual conveyance is not in most cases unnecessary; and whether, considering the saving of duty to the parties, an agreement with a stipulation for a fixed sum by way of damages on breach of the agreement, might not be relied on with safety.

(*a*) Tithes are of three kinds. First, *prædial tithes*, such as of corn, grass, hops, and wool, 1 Roll. Abr. 635. 2 Inst. 649, and of other vegetable produce of the land; and also hay, tares and vetches, *Warner's* case, Cro. Jac. 47. Bunb. 279. *Lewis* v. *Allnutt*, 2 Bli. 83. N. S. But if they are cut green, and given as food to cattle, it is otherwise. See Bunb. 279. *Collyer* v. *Howes*, 2 Anst. 481. 3 Anst. 954. Another prædial tithe arises from the profits of the agistment of cattle, *Scarr* v. *Trinity College*, Gwill. 1445. 1 Wils. Exch. Rep. 170; and wood used for hop-poles, sheep-hurdles, and fuel, *Willis* v. *Stone*, 1 Yo. & Jerv. 262; and shoots or germins growing out of the stumps of old trees cut down, *Evans* v. *Roe*, 1 M'Clell. & Yo. 577, are now held to be tithable. Secondly, *mixed tithes*, as of wool, milk, the tenth part of the young of cows, &c. 1 Roll. Abr. 635. 2 Inst. 649. Thirdly, *personal tithes*, as of manual occupations, fisheries, 2 Bl. Comm. 24, which are now confined to tithes of mills, and fish. See 3 Cru. Dig. 51, third edition.

Tithes prædial.

Mixed.

Personal.

Another division in tithes is into great and small, rectorial or vicarial; and this division is alone attended to in conveying tithes. The origin of this last division is as follows: When dioceses were divided into parishes, the tithes of each parish were allotted by law to its particular minister. The tithes are therefore of common right due to the

Great and small.

OF TITHES.

seised of tithes, made his will, and thereby devised them to vendors as joint tenants.

at the time of his making his will, as well as at the time of his death hereinafter mentioned, seised or well entitled in fee simple in possession, to the tithes and hereditaments hereinafter described, and intended to be hereby granted and released, with the appurtenances; and being so seised, he did in such manner as is by law required for rendering valid devises of freehold estates, duly sign and publish his last will and testament in writing, bearing date on or about the day of , and thereby gave and devised all his real estate whatsoever and wheresoever, (including therein the said tithes and hereditaments hereinafter described, and intended to be hereby granted and released,) unto his two sons the said [*vendors*], their heirs and assigns for ever; (*recital of death of testator, as ante, p.* 316;) AND WHEREAS the said [*vendors*] have contracted and agreed with the said [*purchaser*], for the absolute sale to him of the said tithes, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, and the inheritance thereof in fee simple, free from incumbrances, at or for the price or sum of pounds; AND WHEREAS the said [*purchaser*] is desirous that the said tithes, hereditaments, and premises, should be conveyed to the uses and in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*vendors*] in equal shares well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of

Contract for purchase.

Desire of purchaser to have premises conveyed.

Testatum, whereby vendors convey

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rector or parson thereof. Co. Litt. 300 a. But when the practice of appropriating the advowson of rectories to monasteries was introduced, one of the monks was usually deputed to perform divine service, and the other necessary duties, in those parishes of which the monastery was rector, and the monk was called a vicar, and this vicar was afterwards, by force of several statutes, endowed of the smaller tithes, the greater being reserved to the monastery. 1 Burn. Eccl. Law, 60. 3 Cru. Dig. 53; and see *Willis* v. *Farrer*, 2 Yo. & Jerv. 217.

Tithes the property of laymen.

If tithes are the property of laymen, they are subject to the same incidents as other property, and liable to dower and curtesy.

which, &c. see *ante*, p. 531,) THEY the said [*vendors*] *Have*, and each of them *Hath* granted, bargained, sold, aliened, released, and confirmed, and by these presents *Do*, and each of them *Doth* grant, &c. unto the said [*purchaser*], in his actual, &c. (*reference to lease for a year,*) and his heirs, ALL (*a*) THOSE the great or rectorial tithes or tenths, of or belonging to the said rectory of , in the said county of , and issuing, growing, and arising from and out of the lands and hereditaments next hereinafter described, (that is to say,) ALL, &c. ALL which said lands and hereditaments are situate, lying, and being in the parish of , and are now, together with divers other hereditaments belonging to the said [*vendor*], in the said parish of , and which said rectory of , with the tithes and glebe lands thereunto belonging, were by the last will and testament of [the Right Honourable John Earl of W.], long since deceased, bearing date the day of , devised to [Sir F. D.] afterwards [Lord D.] (who died in December 1781, without issue), for his life, with a limitation to [*trustees*] and their heirs, during his life, *In trust* to preserve contingent remainders, and after his decease, to his first and other sons in tail male, and in default of such

OF TITHES.

Parcels, history of.

(*a*) Or the description may be as follows:

"ALL THOSE the tithes and tenths of corn, grain, hay, and wood, and all and singular other the tithes and tenths, whether great or small, rectorial or vicarial, belonging to the rectory of , in the county of , and issuing, growing, and arising from and out of ALL, &c. with the privileges and appurtenances thereunto belonging."

Great and small tithes.

"ALL THOSE the small or vicarial tithes or tenths, parcel of or belonging to the vicarage of , in the county of , and issuing, growing, and arising from and out of ALL, &c. with the rights, privileges, and appurtenances thereunto belonging."

Small tithes.

And see other descriptions of tithes, 1 Byth. 74. 176.

OF TITHES.

issue, to [Sir T. S.], (who was the father of the said [Lord D.], and who departed this life in ,) for his life, with a limitation to [*trustees*] and their heirs, during the life of the said [Sir T. S.], *In trust* to preserve the contingent remainders, with remainder to the first and other sons of the said [Sir T. S.] in tail male, with divers remainders over; *And* by indentures of lease and release, bearing date, &c. the release being of three parts, and made, &c. between the said [Sir T. S. Bart.] and the first tenant in tail male, under the will of the said [J. Earl of W.], of the first part; [W. W.], gentleman, of the second part; and the said [A. B.], of the third part; and by a common recovery suffered in Trinity Term, in the year of his late Majesty king George the Third, in pursuance of the agreement for that purpose contained in the said indenture of release, the said rectory of , with the tithe and glebe lands thereto belonging, was discharged from all estates tail therein, and the remainders and reversions thereon expectant or depending, and was assured and limited to the use of the said [A. B.], his heirs and assigns for ever; *Together* with all liberties, privileges, &c.; *And* the reversion, &c.; *And* all the estate, &c. To HAVE AND TO HOLD the said tithes, hereditaments, and premises hereby granted and released, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*purchaser*] and his heirs, *To the use* of the said [*purchaser*], his heirs and assigns for ever; *And* the said [*vendors*], *Do* hereby jointly for themselves, their heirs, executors, and administrators, *And* each of them *Doth* hereby severally for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs, and assigns, *That* for and notwithstanding any act, deed, matter, or thing whatsoever, by them the said [*vendors*], or either of them, or the said [*testator*] deceased, made, &c. *they* the said [*vendors*], or some or one of them, now have or hath in themselves or himself, good right, &c. to convey the tithes and other hereditaments hereby granted and released, or intended so to be, unto and *To the use* of the said [*purchaser*], his heirs and assigns, upon the trusts and in the

Habendum to purchaser in fee.

Covenant for title.

manner aforesaid, according to the true intent and meaning of these presents; *And that* the said tithes and other hereditaments hereby granted, &c. with their appurtenances, shall and may from time to time, and at all times hereafter, remain and be *To the use* of the said [*purchaser*], his heirs and assigns, and be peaceably and quietly held and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, received and taken accordingly, without the lawful let, &c. whatsoever, of or by the said [*vendors*], or either of them, or their or either of their heirs, or of or by any other person or persons lawfully, &c.; *And* that free and clear, &c.; *And* (*for further assurance, as ante*, p. 335—6.) IN WITNESS, &c. OF TITHES.

RELEASE *of a Right of* COMMON *of* PASTURE, (*a*) *with a Variation for its being a Grant of Common of* ESTOVERS, *Common of* TURBARY, *or Common of* PISCARY. OF COMMON OF PASTURE.

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part. WHEREAS the said [*vendor*] is seised of, or well entitled, to him and his heirs, of the commonable right of pasture (*b*) in the common or waste ground hereinafter described; AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said commonable right, free from incumbrances, at the sum of

Parties.

Seisin of right of common.

Contract for purchase.

(*a*) As to rights of common, see *ante*, p. 497.

(*b*) Or it may be,

"of estovers," "of turbary," *or* "of piscary." Estovers, &c.

OF COMMON OF PASTURE.

pounds. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds (*payment of consideration and receipt, as ante*, p. 531), HE the said [*vendor*] *Hath* granted, bargained, sold, aliened, and released, and by these presents *Doth* grant, bargain, sell, alien, and release, unto the said [*purchaser*], in his actual, &c. (*reference to lease for a year*), and his heirs, ALL that the right of pasture, and the advantage and enjoyment of common and feeding for cattle, (*c*) of him the said [*vendor*], of, in, or upon all those the waste or commonable fields called , situated at, &c. *Together* with all other rights, privileges, advantages, commodities, emoluments, and appurtenances whatsoever, to the said common, hereditaments and premises, or any of them, or any part thereof, respectively belonging, or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed, *And* the remainder and remainders, reversion and reversions, of and in the same;

Testatum, whereby vendor conveys

Parcels.

(*c*) If the number of cattle be limited say, according to the number,

Limited number of cattle.

" for fifty oxen, one hundred sheep," &c.

If it be a right of common of estovers, say,

Estovers, &c.

" ALL THAT right of common of estovers, and the right and privilege of taking and cutting all necessary housebote, plough-bote, and hedge-bote of him the said [*vendor*], of, in, or upon ALL THOSE the waste or commonable fields or grounds, situate at, &c.; *Together* with," &c.

If it be a right of common of piscary, say,

Piscary.

" ALL THAT right of common of piscary, and the right and privilege of fishing, and taking and keeping all manner of fish whatever, in, from, and out of the river of ; *Together* with," &c.

If it be a right of common of turbary, say,

Turbary.

" ALL THAT right of common of turbary, and the right and privilege of digging, cutting, using, and carrying away peat turf, of, from, and out of all those the waste or commonable fields of , called , situate at, &c.; *Together* with," &c.

OF COMMON OR PASTURE.

And all the estate, right, title, interest, use, trust, property, possession, powers, remedies, claim, and demand whatsoever, both at law and in equity, of him the said [*vendor*], in, to, out of, upon, or respecting the said right of common, hereditaments and premises, To HAVE AND TO HOLD the said right of common, hereditaments, and all and singular other the premises hereinbefore described, and hereby granted and released, or intended so to be, with their appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns for ever; *And* the said [*vendor*] *Doth*, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs and assigns, in manner following (that is to say); that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, omitted, committed, executed, occasioned, or knowingly suffered by him the said [*vendor*], he the said [*vendor*] is at the time of the sealing and delivery of these presents lawfully, rightfully, and absolutely seised, or otherwise well entitled, of and to the said right of common, hereditaments, and premises hereby granted and released, or intended so to be, with the appurtenances, for a good, sure, perfect, absolute, and indefeasable estate of inheritance in fee simple, without any lawful condition, qualification, restriction, cause, matter, or thing whatsoever, which can or may revoke, determine, abridge, alter, charge, incumber, or affect the same in any manner howsoever; *And* that, for and notwithstanding any such act, deed, matter, or thing, as aforesaid, he the said [*vendor*] now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, and release the said right of common, hereditaments, and premises, unto and to the use of the said [*purchaser*], his heirs, and assigns, in the manner aforesaid, according to the true intent and meaning of these presents; *And further*, that he the said [*purchaser*], his heirs and assigns, shall and may lawfully, immediately upon the sealing and delivery of these presents, and at all times thereafter, have, hold, possess, use, and enjoy all and singular the said rights of common, hereditaments, and premises, with their and every of their privileges, advantages, and appurtenances,

Habendum to the purchaser, his heirs and assigns for ever.

Covenants for title;

seisin in fee;

good right to convey;

for quiet enjoyment by purchaser;

OF COMMON OF PASTURE.

to and for his and their own use and benefit, without any lawful let, suit, hindrance, interruption, disturbance, eviction, claim, or demand whatsoever, by or from the said [*vendor*] or his heirs, or any person or persons now or hereafter having, or rightfully claiming, any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under, or in trust for him; *And* that free and clear, and freely and clearly, and absolutely acquitted and exonerated, or otherwise, by and at the costs and charges of the said [*vendor*], his heirs, executors, or administrators, effectually defended, protected, and indemnified of, from, and against all former and other gifts, grants, bargains and sales, conveyances and assurances, estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time or times hereafter may be made, created, executed, occasioned, committed, or suffered, by the said [*vendor*], or any person or persons now or hereafter rightfully or lawfully claiming or possessing any estate, right, title, and interest, either at law or in equity, from, through, under or in trust for him, them, or any of them, or by or through his, their, or any or either of their acts, means, default, consent, or privity: *And moreover*, that he the said [*vendor*], and his heirs, and all and every persons and person now or at any time hereafter lawfully and rightfully having, or claiming, any estate, right, title, charge, or interest, at law or in equity, in, to, out of, or upon, or respecting the said right of common, hereditaments, and premises hereby granted and released, or intended so to be, or any part thereof, by, from, through, under, or in trust for him, them, or any of them, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*purchaser*], his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, or cause or procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all proper expedition, all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things

free from incumbrances;

and for further assurance.

whatsoever, for the further, better, more perfectly and absolutely granting, releasing, conveying, and assuring the said right of common, hereditaments, and premises hereby granted and released, or intended so to be, with their and every of their rights and appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, in such manner and form as he the said [*purchaser*], his heirs or assigns, or his or their counsel in the law, shall advise and require. IN WITNESS, &c. (*a*)

(*a*) It has been thought proper to introduce a general form of conveyance of a right of common by lease and release; but it should be observed, that it is more usual in practice to convey such a right *alone* by a *grant*. The proper form of such a deed will be introduced under the title GRANT. Grant.

I may here briefly mention, what rights of common may be granted at law or in equity. As a general rule, every estate, title, and interest, may be conveyed; but there are a few exceptions resting on particular grounds. Common of pasture, if it be common appendant, cannot be severed from the land; Perk. s. 104. *Daniel* v. *Hertford*, Cro. Car. 542; nor common appurtenant, if it be for cattle levant and couchant, or without number. *Drury* v. *Kent*, Cro. Jac. 15. But common appurtenant for a certain number of beasts may be severed from the soil by grant, and thereby be made common in gross. Ibid. *Spooner* v. *Day and another*, Cro. Car. 432. As to common in gross in fee, it may be granted over, though it be without number; 2 Roll. Ab. 46. pl. 15; but it is said that a grantee for life or years, of common of pasture (which must be understood of common in gross), for cattle without number, cannot transfer the same, unless the original grant be made to his assigns. Perk. s. 103. 2 Roll. Abr. 46. pl. 16. *Sed quære.* And see, Roll. Ab. *ubi supra.* 2 Sand. Us. & Tr. 27. What rights of common may be granted.

LEASEHOLDS FOR LIVES.

Conveyance *of* Leaseholds *for* Lives.

Parties.

Indenture of lease, whereby premises were leased to vendor for three lives.

Contract for purchase.

Testatum.

THIS INDENTURE, made the day of , BETWEEN(*a*) [*vendor*] of, &c. of the one part; and [*purchaser*] of, &c. of the other part. WHEREAS by an indenture of lease, with livery of seisin indorsed thereon, bearing date on or about the day of , and made or expressed to be made between [*lessor*] of the one part, and the said [*vendor*], of the other part, it is witnessed, that for the considerations therein mentioned, the said [*lessor*] did demise and lease unto the said [*vendor*], his heirs and assigns, ALL THAT, &c. (*parcels*), TO HOLD the same with the appurtenances, unto the said [*vendor*], his heirs and assigns, from the day of the date of the said indenture, for and during the natural lives and life of [A. R.] of &c. then aged years, [C. D.] of &c. then aged years, and [E. F.] of, &c. then aged years, and the longest liver of them, under and subject to the payment of the yearly rent of pounds, and to the performance of the covenants and agreements therein contained, on the tenants' or lessees' part to be observed and performed. AND WHEREAS the said [*purchaser*] hath contracted with the said [*vendor*] for the purchase of the said messuage or tenement, farm, hereditaments and premises, hereinbefore described, and intended to be hereby granted and released, with the appurtenances, for the lives and life of the said [A B.], [C. D.] and [E. F.], and the longest liver of them, free from incumbrances, at or for the price or sum of pounds; NOW THIS INDENTURE WITNESSETH, that in pursuance and

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Dower.

(*a*) As a wife is not entitled to dower out of any other estates than estates of inheritance, estates in fee simple, and in fee tail, she need never be a party. 1 Rol. Abr. 676. G. And see *ante*, p. 485, n. (*a*).

LEASEHOLDS FOR LIVES.

performance of the said agreement, *And* in consideration of, &c. (*payment of consideration and receipt by vendor, as* ante, p. 256), HE the said [*vendor*] *Hath* granted, bargained, sold, aliened, released and confirmed, *And* by these presents *Doth* grant, bargain, sell, alien, release and confirm unto the said [*purchaser*], in his actual, &c. (*reference to lease for a year*); ALL THOSE the said messuages or tenements, farm, hereditaments and premises, hereinbefore described, and comprised in, and demised by the said hereinbefore recited indenture, with their and every of their appurtenances, *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, farm, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances, unto the said [*purchaser*] and his heirs, *To the use* of him the said [*purchaser*], his heirs and assigns, for and during the natural lives and life of the said [A. B.], [C. D.], and [E. F.], and of the longest liver of them, at, under, and subject nevertheless to the payment of the rent, and to the observance and performance of the covenants, conditions, and agreements in and by the said recited indenture of lease reserved and contained, and which from henceforth on the tenants' or lessees' part are, or ought to be paid, observed, and performed. (*Covenant by vendor that the lease is good, as, ante,* p. 319, *covenants for title, as* ante, p. 257—262). IN WITNESS, &c.

Consideration.

Parcels.

Habendum to the purchaser; for the lives of the nominees.

Ccovenants for title.

OF COPYHOLDS FOR LIFE OR LIVES.

CONVEYANCE *of* COPYHOLDS *holden for the* LIFE *of the Vendor, with Variations for the circumstance of his holding for the* LIVES *of Others.*

THIS INDENTURE, made the day of

Parties. BETWEEN [*vendor*] of, &c. of the one part, and [*purchaser*] of, &c. of the other part (*a*).

Contract for sale; (*See recital of lease, ante*, 546). WHEREAS the said [*vendor*] hath contracted and agreed with the said [*purchaser*], for the sale to him of the messuages or tenements, lands and hereditaments, hereinafter described, and intended to be hereby covenanted to be surrendered for and during the life of the said [*vendor*], with their appurtenances, free from incumbrances, at or for the price or sum of pounds, and the same are intended to be covenanted to be surrendered to him or to his use, in manner hereinafter expressed.

Testatum, whereby in consideration of purchase money, NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds, of lawful money of Great Britain and Ireland by the said [*purchaser*] to the said [*vendor*], well and truly paid at or immediately before the sealing and delivering of these presents, (the receipt of which said sum of pounds he the said [*vendor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors and administrators,)

vendor covenants to surrender; HE the said [*vendor*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*purchaser*], his heirs, executors, administrators, and assigns, in manner following, (that is to say); that he the said [*vendor*] (*b*) shall and will at the costs and charges of the

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Recitals. (*a*) See other recitals, which may easily be adapted to copyholds, *ante*, p. 546.

Lives. (*b*) If for lives, say, according to the grant, "his executors, administrators, and assigns," *or* "his heirs and assigns,"

said [*purchaser*], his executors, administrators and assigns, at or before the next general or other court which shall or may be hereafter holden in or for the said manor of well and effectually surrender, or cause or procure to be well and effectually surrendered into the hands of the lord or lords, lady or ladies, for the time being of the said manor, or otherwise convey and assure according to the custom of the said manor, *To* or to the use of the said [*purchaser*], his heirs and assigns, ALL THAT, &c. *And* the reversion, &c. *And* all the estate, &c. *To* the end and intent that the lord of the said manor may immediately after such surrender re-grant the said messuage or tenement, lands, hereditaments and premises, with the appurtenances, unto the said [*purchaser*], his heirs (*c*) and assigns, for and during the residue of the natural life of the said [*vendor*], so that he the said [*purchaser*], his heirs(*d*) and assigns, shall and may be lawfully and rightfully admitted thereto, at the will of the lord, according to the custom of the said manor, subject only to the customary rents, duties, suits, and services therefore due, and of right accustomed; *And* further that in the mean time, and until such surrender shall be made and perfected, and the said [*purchaser*] shall be admitted tenant to the said hereditaments and premises, he the said [*vendor*] and his heirs shall and will stand and be seised or possessed of, and interested in the said messuage or tenement, lands and premises, with the appurtenances, *In trust* for the sole use and benefit of him the said [*purchaser*], his heirs and assigns,(*e*) and to, for, and upon no other use, trust, end, intent, or purpose whatsoever, *And* the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, further covenant, promise, and agree with and to the said [*purchaser*], his heirs, executors, administrators, and assigns, in manner following, (that is to say); *That* for and notwithstanding any act, deed, matter, or thing whatsoever, made, done, committed, permitted, or suffered to the con-

OF COPYHOLDS FOR LIFE OR LIVES.

and until such surrender shall be made, shall stand possessed of the premises, upon trust for purchaser;

covenants for title, good right to surrender;

(*c*) *Or* "his executors, administrators, and assigns," Lives.
(*d*) *Or* "his executors, administrators, and assigns,"
(*e*) *Or* "his executors, administrators, and assigns,"

OF COPYHOLDS FOR LIFE OR LIVES.

trary by him the said [*vendor*], he the said [*vendor*] now hath in himself good right, full power, and lawful and absolute authority to surrender and assure the said messuage or tenement, lands, hereditaments, and premises, hereby covenanted to be surrendered, or intended so to be, and every part and parcel of the same, with the appurtenances, unto and to the use of the said [*purchaser*], his heirs and assigns, for and during the life of the said [*vendor*], (*a*) in manner aforesaid, according to the custom of the said manor, and the true intent and meaning of these presents; *And also* that it shall and may be lawful to and for the said [*purchaser*], his heirs and assigns, immediately upon and after the execution of these presents, and thenceforth during the life (*a*) of the said [*vendor*], to enter into and upon, have, hold, use, occupy, possess and enjoy the said messuage or tenement, lands, hereditaments, and premises hereby covenanted to be surrendered, or intended so to be, and every part and parcel thereof, with the appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part and parcel of the same (*b*), without any let, suit, trouble, eviction, interruption, hindrance, denial, claim, or demand whatsoever, of, from, or by the said [*vendor*] or his heirs, or any person or persons lawfully claiming, or to claim, any estate, right, title, term, or interest in the premises, by, from, through, under, or in trust for him, them, or any of them, *And* that free and clear, and freely clearly, and absolutely acquitted, exonerated, released, and discharged, or otherwise, by him the said [*vendor*], his heirs, executors, or administrators, at his and their own costs and charges in all things, well and sufficiently protected, defended, saved harmless, and kept indemnified, of, from, and against all and all manner of former and other surrenders, admittances, gifts, grants, forfeitures,

for quiet enjoyment;

free from incumbrances;

Variation for estate for lives.

(*a*) *Or*, "the lives of the said [A. B.], [C. D.], and [E. F.], and the survivors or survivor of them,"

(*b*) *Or*, "to the use of the said [*purchaser*], his heirs, executors, administrators, and assigns, for and during the lives of all the said [*nominees*], and the lives and life of the survivors or survivor of them."

cause and causes of forfeiture, mortgages, freebench, uses, trusts, wills, entails, sequestrations, estates, titles, troubles, liens, charges, and incumbrances whatsoever, at any time or times heretofore, and to be at any time, and from time to time hereafter had, made, done, omitted, committed, occasioned, or suffered by the said [*vendor*] or his heirs (*b*), or by any person or persons rightfully claiming, or to claim, any estate in the premises, by, from, through, under, or in trust for him, them, or any or either of them, or by his, their, any or either of their acts, means, consent, default, privity, or procurement (the rents, duties, suits and services to be paid, rendered, and performed, for or in respect of the said copyhold premises only excepted); *And moreover* that he the said [*vendor*], and his heirs (*c*), and all and every person and persons whosoever lawfully or equitably and rightfully claiming, or to claim, any estate, right, title, trust, or interest in the premises, by, from, through, under, or in trust for him or them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*purchaser*], his heirs and assigns (*c*), make, do, acknowledge, levy, suffer, execute, and perfect, or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, all and every such further and other lawful and reasonable acts, deeds, devices, surrenders, conveyances and assurances in the law whatsoever, for the further, better, more perfectly, lawfully, and absolutely surrendering, releasing, confirming, or otherwise assuring the said messuage or tenement, lands, hereditaments, and premises hereby covenanted to be surrendered, or intended so to be, and every part and parcel of the same, with their appurtenances, unto or to the use or behoof of the said [*purchaser*], his heirs or assigns, for and during the residue of the life of the said [*vendor*], at the will of the lord, according to the custom of the said manor, and the true intent and meaning of these presents, as by the said [*pur-*

OF COPYHOLDS FOR LIFE OR LIVES.

and for further assurance.

(*b*) *Or*, "his executors or administrators.

(*c*) *Or*, "his heirs, executors, and administrators,"

OF COPYHOLDS FOR LIFE OR LIVES.

chaser], his heirs or assigns, (*a*) or his or their counsel in the law, shall be reasonably devised or advised and required, and tendered to be made, done, and executed. IN WITNESS, &c.

Lives.

(*a*) *Or*, "his executors, administrators, and assigns."

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ERRATA, VOL. VI.

Page 5, *l.* 21, *for* "159," *read* "136."
7, *l.* 12, *for* "443," *read* "423."
14, *l.* 6 from bottom, *for* "*May* v. *Hook*," *read* "*Musgrave* v. *Dashwood*."
168, *l.* 17, *for* "are" *read* "is."
258, *l.* 10 from bottom, *for* "6 B. & A." *read* "1 B. & C."
283, *l.* 18, *for* "Rep." *read* "6 Rep."
—, *l.* 24, *for* "4 Ves. 63," *read* "4 Ves. 631."
299, last line, *for* "11 East," *read* "1."
328, *l.* 4 from bottom, *for* "*Anon.*" *read* "*Chapham* v. *Wray*."
375, *l.* 8 from bottom, *for* "1 B. C. C. 207," *read* "3 B. C. C. 217."
428, *l.* 21, *for* "8 Bos. & Pull. 343," *read* "3 Bos. & Pull. 643."

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